108-352

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~842.~~ ~~345~~ 255

WILLIAM P. SINCLAIR & COMPANY, A FIRM COMPOSED OF WILLIAM P. SINCLAIR AND SAMUEL GIBSON SINCLAIR, OWNERS AND CLAIMANTS OF THE SHIP CONNEMARA, HER CARGO, &C., BY JOHN CAMERON, MASTER, ET AL., APPELLANTS,

vs.

JOSEPH COOPER, OWNER OF THE TUG JOSEPH COOPER, JR., JOHN J. WILLIAMS, MASTER, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED AUGUST 26, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 842.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

JOSEPH COOPER ET AL.
versus
SHIP CONNEMARA, CARGO, &C. } No. 8856.

Transcript of appeal from the district court.—Filed October 15, 1879.

United States district court, district of Louisiana.

JOSEPH COOPER ET AL.
vs.
SHIP CONNEMARA, CARGO, &C. } No. 11375.

Libel for salvage.—Filed April 17th, 1879.

DISTRICT OF LOUISIANA, *ss:*

District court of the United States for the district of Louisiana.

To the honorable Edward C. Billings, judge of said district court of the United States for the district of Louisiana.

2 The libel and complaint of Joseph Cooper, of the city of New Orleans, in said district of Louisiana, owners of the steam tow-boat called the Joseph Cooper, junior, of about one hundred tons burden, and John J. Williams, master of said steam tow-boat, and of the crew of said tow-boat Joseph Cooper, jr., whereof John Cameron now is or late was master, her tackle, apparel, furniture, boats, and freight, and all and singular the goods, wares, and merchandize now or late on board the said ship, in a cause of salvage, civil and maritime.

And thereupon they do allege and articulately propound as follows:

1st. That on the 15th day of April, 1879, at the port of New Orleans, in said district, the said ship Connemara being then and there laden with a large and valuable cargo of about forty-one hundred and thirty (4130) bales of cotton besides other merchandise, and being a vessel of about 1,200 tons burthen, left the said port of New Orleans bound
3 on a voyage to the port of Liverpool, in the Kingdom of Great Britain; that said vessel left the said port of New Orleans on said voyage at about the hour of 4 p. m. of said day, in the tow of the said steam tow-boat Joseph Cooper, jr., and proceeded down the river towards the bar; that the weather was bad, and after reaching a point in the river distant about twenty five miles from the city of New Orleans, as was prudent under the circumstances and in the existing state of the weather, the said ship was anchored at or near the plantation known as the Belair plantation, to await more favorable weather to continue her voyage.

2d. That after said ship had been at anchor as aforesaid a short time the said vessel was discovered to be on fire in the cargo of cotton on board said ship; that the fire had obtained considerable headway before the same was discovered, and bid fair to destroy both the said
4 ship and her cargo, and but for the aid and assistance rendered by said libellants, as hereinafter set forth, would, as your libellants verily believe, been completely destroyed and a total loss.

3. That said ship was without any sufficient or adequate machinery

or pumps to extinguish said fire and save said vessel and cargo from total destruction.

4. That as soon as the said master of said Joseph Cooper, jr., discovered the critical and dangerous situation of said ship he immediately proceeded alongside of said vessel with said steam towboat, and found that the conflagration had made very considerable progress on a large amount of cotton stowed in a house extending above the deck of said vessel, and that unless promptly checked the fire would soon communicate to the inflam'able portions of her rigging of said vessel and make it impossible to stay near the said vessel or render her effective assistance.

5. That the said steam towboat Cooper had on board on her deck a pump operated by steam, which was the only means available to extinguish said fire.

6. That the said steam tow-boat Cooper was at once without any delay laid alongside said ship and the said steam pump at once set at work, a hose carried on board said ship and a large stream of water discharged on the portions of said cargo so on fire; that by reason of the large capacity of said pump, libellants were enabled *were enabled*, after about three quarters of an hour's work with the pump, to completely extinguish the fire and rescue said ship and cargo from said impending destruction.

7 That without the presence of said steam tow-boat with its equipment of steam pump, said vessel and cargo would in a short time been totally consumed and a total loss to the owner thereof. That there was at the time no other assistance in that vicinity which could have been invoked to arrest said conflagration and prevent a total loss of said vessel and cargo, and that said vessel and cargo were in all respects by said libellants rescued from a most hazardous and dangerous situation.

8. That the said l bellants, by reason of the risk and hazard they ran and the service they performed in saving the said ship Connemara and her cargo, deserve and are justly entitled to meet and competent salvage for such service, and to so much as have been and is actually a'lotted by this court to persons doing and performing like service, together with all charges and expenses attending the same.

9. That the said ship and her cargo are within this district and the jurisdiction of this court, and that all and singular the premises are true.

Wherefore said libellants pray that process in due form of law in cases of admiralty may issue against the said ship Connemara, her tackle, apparel, boats, and furniture, and against the cargo laden thereon wheresoever the same shall be found and that all persons having or pretending to have any right, title in or to the said ship, cargo, and freight money due, or to become due, to her or her owners, may be cited and admonished to appear and answer upon oath all and singular the premises, and that this honorable court will be pleased to decree such sum or proportion of the value of the said ship and her cargo to be due to the libellants as a compensation for their said salvage services as shall seem meet and reasonable, together with their expenses in this behalf sustained, and to condemn the said ship, her tackle, apparel, furniture, and boats, and cargo laden thereon, and all persons intervening for

their interest in said ship and cargo in costs and otherwise, right and justice administer in the premises.

(Signed) JOSEPH COOPER,
For Libellees.

(Signed) J. R. BECKWITH,
Proctor.

Sworn to and subscribed before me this 17 April, 1879.

(Signed) R. DEVONSHIRE,
Dy Clk.

8 Let admiralty process issue as prayed for.

April 17th, 1879.

(Signed) R. DEVONSHIRE,
Dy Clk.

Admiralty Warrant.—Issued April 17, 1879.

The President of the United States of America, to the marshal of the district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the ship Connemara, her tackle, cargo, freight, &c., now libelled by Joseph Cooper et al. for the cause set forth in the libel now pending in district court of the United States for the district of Louisiana: that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the ser-
9 vice hereof, to show cause, if any they have, or can, why the said ship, cargo, freight, &c., should not be condemned and sold, agreeably to the prayer of libellant, and how you have executed this warrant, that you make return according to law.

Witness the Hon. Edward C. Billings, judge of the said court, at New Orleans, this 17th day of April, 1879, and the 103d year of the Independence of the United States.

[SEAL.] (Signed) R. DEVONSHIRE,
Dy Clk.

Marshal's return.

Received April 17, 1879, by the U. S. marshal, and on the 18th day of April, 1879, seized, and into my possession took, the ship Connemara, her freight, cargo, tackle, &c., and appointed a keeper thereon, laying near the right bank of the Mississippi River, about 28 miles below the city of New Orleans. Monition published in the New Orleans Times and hereto attached.

April 28, 1879.

10 (Signed) C. R. STEELE,
Dy Marshal.

Claim.—Filed April 22, 1879.

U. S. district court.

JOSEPH COOPER ET ALS. *vs.* SHIP CONNEMARA. } No. 11375.

The claim of John Cameron, master of the ship Connemara.

And now comes John Cameron, of Leith, Scotland, and states that he

was on the 15th of the present month, and is still, the master of the ship Connemara herein seized; that at the time of the seizure he was in possession of said ship and her cargo, and that he is the lawful bailee thereof for the owners.

This claimant hereto appends as estimate of the value of the said ship, cargo, and freight list and prays that in consideration of the premises said agreed estimate and the testimony taken by consent between
11 the parties on the 19 April, 1879, herewith filed, the ship and cargo be released to this claimant upon giving bond with good and solvent security and conditioned according to law for an amount to be fixed by your honor.

(Signed) JOHN CAMERON.

Sworn to and subscribed before the undersigned, a commissioner of the circuit courts duly appointed and sworn by the circuit court of the United States, in and for the district of Louisiana, at New Orleans, as witness my hand and seal, at New Orleans, this 22 April, 1879.

(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

Agreement as to value.—Filed April 22d, 1879.

District court of the United States, district of Louisiana. In admiralty.

JOSEPH COOPER ET AL. *vs.* SHIP CONNEMARA, &C. } No. 11375.

It is hereby stipulated and agreed between libellants and the
12 claimants that the following is the value of the ship Connemara, cargo, and freight money:

CARGO.

One million nine hundred & twenty-nine pounds of cotton, value	$190,679
Oil cake	2,845
Staves	290
Value of ship £6,000	29,040
Freight list	13,783

(Signed) JNO. & W. S. FINNEY,
For Claimants.
" J. R. BECKWITH,
Proctor for Libellants.

Submission on question of bond.—Extract from the minutes April 23, 1879.

JOSEPH COOPER ET AL. *vs.* SHIP CONNEMARA. } 11375.

After hearing argument concerning the amount of bond required for the release of the property under seizure, the court took time to advise

13 *Intervening libel of L. Wuertz & al.—Filed April 23, 1879.*

In admiralty.

To the judge of the district court of the United States for the district of Louisiana.

Louis Wuertz and Henry Holser of New Orleans, passengers on board of the steam tug Joseph Cooper, jr., at the time of the rendition of the salvage services hereinafter named, and a mariner and pilot by profession, exhibits this his libel against the ship Connemara, her cargo and freight money due thereon, now in the custody of the marshal of the district aforesaid under arrest in virtue of a warrant issued out of this hon. court at the suit of Joseph Cooper et al. in a cause of salvage, civil and maritime, her boats, tackle, apparel, and furniture, as well as the cargo laden on board of the same and the freight money due thereon, and against all persons lawfully intervening for their interest therein in a cause of salvage, civil and maritime.

14 And thereupon the said Louis Wuertz and Henry Holsher do allege and articulately propound as follows, to wit:

1. That on the 15th day of April, 1879, at the port of New Orleans, in said district, the said ship Connemara, being then and there laden with a large and valuable cargo of about 4,130 bales of cotton besides other merchandise, and being a vessel of about 1,200 tons burthen, left the said port of New Orleans bound on a voyage to the port of Liverpool, in the Kingdom of Great Britain; that said vessel left the said port of New Orleans on said voyage at about the hour of 4 p. m. of said day, in tow of the said steamboat Jos. Cooper, and proceeded down the river towards the bar; that the weather was bad, and after reaching a point in the river distant about 25 miles from the city of New Orleans, as was prudent under the circumstances and in the existing state of the weather, the said ship was anchored at or near the plantation known as the

15 Belair plantation, to await more favorable weather to continue her voyage.

2. That after said ship had been at anchor as aforesaid a short time, the said vessel was discovered to be on fire in the cargo of cotton on board said ship; that the fire had obtained considerable headway before the same was discovered, and bid fair to destroy the said ship and cargo, and but for the aid and assistance rendered by libellants, together with the said tug and her crew as hereinafter set forth, your libellant verily believes said ship and cargo would have been completely destroyed.

3. That said ship without any sufficient or adequate machinery or pumps to extinguish said fire or save said vessel and cargo from total destruction.

4. That as soon as it was discovered that said ship and cargo were in a dangerous and critical condition and situation, said tug Jos. Cooper, jr., with libellant' on board as passengers, immediately went along-

16 side of ship, and it was found said fire had made considerable headway among a large amount of cotton stowed in a house extending above the deck of said vessel, and that unless promptly checked said fire would soon communicate to the inflammable portions of the rigging of said vessel and make it impossible to lay near the said vessel or render her effective assistance.

5. That the said steamboat Joseph Cooper had on board and on her deck a steam-pump, which was the only available means to extinguish said fire.

6. That said tug having been put alongside of said ship as aforesaid said pump was immediately started by her said crew, and a hose, with a large stream of water was caried on board of said burning ship by a portion of said tug's crew and by the libellants, and a large stream of water was discharged on the portion of said cargo, where said fire was burning, and said crew, ably and actively assisted by libellants,
17 by reason of the steam pump aforesaid were enabled, after three-quarters of an hour's skilful and ardnous labor, to extinguish said fire and save said ship and cargo from impending ruin.

7. That without presence of said tow-boat and the crew and libellants, who were skilled seaman, and the former a duly licensed pilot, said vessel and cargo would in a short time have been totally consumed, and become *to* total loss to the owners thereof, as there was at the time no other assistance within reach which could have been called upon to arrest said conflagration or stop said loss.

8. That libellants for the services so rendered as aforesaid in conjunction with said tug and her crew in saving said vessel and cargo as aforesaid, deserve to have, and therefore claims, compensation for said services by way of salvage.

9. That all and singular the premises are true.

Wherefore libellants pray that process of monition may issue
18 . to the marshal of the district aforesaid, commanding him to cite and admonish all persons having or pretending to have any right, title, or interest in the said ship Connemara, her boats, tackle, apparel, cargo, and freight, to appear before this hon. court on the day of , or such other day to be inserted in said monition as the court shall direct, then and there to answer the libellants in the premises according to the course of the courts of admiralty and the rules & practice of this hon. court in civil causes of admiralty and maritime jurisdiction; and that this hon. court will pronounce for the libellants' aforesaid demand, and decree the same to be paid, with costs.

(Signed) R. DE GRAY,
Proctor.

Let this intervention be filed.
April 23, 1879.
(Signed) EDWARD C. BILLINGS,
Judge.

Order fixing bond at $35,000.—*Extract from minutes April* 24, 1879.

JOSEPH COOPER & ALS.
vs. } 11375.
SHIP CONNEMARA, CARGO, &C.

19 Ordered that the bond to be given for the release of the property under seizure in this case be fixed at $35,000.

Answer to libel.—Filed May 2*d*, 1879.

U. S. district court.

JOS. COOPER
vs.
SHIP CONNEMARA.

And now comes John Cameron, a citizen of the kingdom of Great Britain, and master of the ship Connemara, and for answer to the libel

against the said ship, cargo, and freight, doth allege and propound as follows:

1. This defendant admits the allegations contained in the first article of said libel.

2. This defendant denies all the allegations contained in the second article of said libel, except that, after coming to anchor, the ship Connemara was discovered to be on fire. And this defendant alleges that said fire broke out, not in the cargo proper stowed in the hold of said vessel, but merely among certain bales of cotton stowed in the
20 poop above the main deck, to which place the fire was exclusively confined, and which portion of the vessel was readily accessible; that the insignificant nature and extent of the damage show that the fire had been burning only a short time; that it had not gained any considerable headway; that it still was and would have been for a much longer time readily extinguishable by the unaided efforts of the Connemara's crew, and that said vessel was therefore in no immediate danger, nor her safety so imperilled as to have been secured only by the efforts or aid of the libellants. This defendant further alleges that only three bales of cotton were burned, and these only partly; that when the fire was discovered among the bales of cotton stowed in the poop, there was no flame or blaze, and that within a few minutes after the hose of the towboat commenced throwing water on the bales of cotton on fire were perfectly black, and in ten or fifteen minutes afterwards the
21 fire was entirely extinguished, and that said fire was out; seven bales of cotton were pulled out of the poop, and of these, only three were at all burned, these three being the ones above mentioned.

3. This defendant denies all the allegations contained in the 3d article of said libel, and alleges that there were at the time of the fire on board the Connemara, and within about twelve feet of the seat of the fire, two large water tanks, each containing about 400 gallons of water, a number of buckets, and two pumps which were fully adequate to have extinguished said fire.

4. This defendant, for answer to the 4th article of the libel, denies that said towboat Joseph Cooper, jr., immediately on the discovery of the fire, did proceed alongside of the said Connemara, and avers that at and before said fire, the said towboat was already lashed alongside said ship. This defendant also denies that the said fire had at any time made any considerable progress in any large amount of cotton on
22 board the Connemara, or that there was any immediate danger of the fire communicating to the rigging of said vessel, and avers that the matters are truly stated in the answer to the 2d article of the libel.

5. This defendant admits that the towboat Joseph Cooper, jr., had on board a steam-pump, but denies that said pump was the only means available to extinguish said fire.

6. This defendant denies that said towboat was laid alongside said vessel; that she was already lashed alongside when the fire begun. This defendant admits that the steam-pump on said towboat was set at work and a hose carried on board the Connemara, and a large stream of water thrown upon the part of the cargo on fire, and that by reason of the water thrown by said hose, the fire was extinguished, but on much less time than as stated in the 6th article of said libel.

7th. This defendant denies all the allegations contained in article 7 of the libel, and avers that the matters are truly stated in the answer to the 2d article.

23 8. This defendant denies that the libellants ran any risk or

hazard in extinguishing said fire, or that they are entitled to any salvage compensation.

Wherefore this defendant prays that the libel be dismissed at libellant's costs.

(Signed) JOHN CAMERON.

(Signed) JNO. & W. S. FINNEY,
Proctors for Resp't.

Personally appeared before me, the undersigned authority, John Cameron, the respondent in the foregoing answer, and being duly sworn, declared that the statements therein contained are true.

JOHN CAMERON.

Sworn to and subscribed before me this day.
New Orleans, May 2, 1879.

N. B. TRIST,
Not. Pub.

Intervening libel of Jno. Evers.—Filed May 8, 1879.

U. S. dist. court. In admiralty.

JOSEPH COOPER
vs.
SHIP CONNEMARA.

24 To the hon. the judge of the district court of the United States for the district of Louisiana:

John Evers, a passenger on the ship Connemara at the time when the salvage services hereinafter set forth were rendered, and a steved re by occupation, exhibits this his intervening libel against the ship Connemara, her tackle, apparel, and furniture, her cargo and freight money due thereon, now in the custody of the marshal of this district, and under arrest in virtue of a warrant of this hon. court, at the above suits, in a cause of salvage, civil and maritime, brought against said vessel, her cargo and freight money, and against all persons lawfully intervening for their interest therein in a cause of salvage, civil and maritime, and thereupon the said John Evers allege and articulately propound as follows:

That on the 15th April, 1879, at the port of New Orleans, in said district, the said ship being then and there laden with a large and valuable cargo of about 4,100 bales of cotton and other merchandize, said vessel being of the burthen of about 1,200 tons, left the said port
25 of New Orleans bound on a voyage to Liverpool; that she left the port of New Orleans at about 4 p. m. of the 15th of April, in tow of the steam tug Joseph Cooper, and proceeded down the river; that having reached a point about 28 miles below the city, she came to anchor nearly opposite the plantation called the Belair plantation.

2. That about 11.30 p. m of the 15 April, libellant, who was then asleep in the cabin occupied by the second mate, was awakened by smoke which had invaded the said cabin; that the odor emitted was that of burning cotton; that he sprung from his berth, awoke the steward, then asleep in the cabin in which libellant was, & directed him to proceed to the cabin and notify the captain of the ship; that libellant rushed on deck and gave the alarm to the officers and crew of the ship, and also gave the alarm to the officers and crew of the tug Joseph

Cooper, then laying alongside of the ship Connemara; that the
26 cotton on said ship was at this time on fire; that considerable headway had already been attained, and the ship and cargo in immediate danger of destruction, and but for the timely discovery of the existence of the fire by libellant, and the alarm given by him, and the aid and assistance rendered by libellant, together with the said tug Joseph Cooper, and her officers and crew, as hereinafter set forth, your libellant verily believes, and so alleges, that said ship and her cargo would have been completely destroyed.

3. That said ship was without sufficient machinery and appliances, or pumps and other facilities to extinguish said fire and save said vessel and cargo from the threatened destruction.

4. That the officers and crew of the tug promptly answered the alarm, and took immediate steps to meet the emergency; that said tug had on her a steam pump of great power, and the prompt ap-
27 plication and use of the same were the only means by which the vessel and cargo could be saved.

5. That the cotton which was on fire was stowed in a house above the deck of the ship, and threatened the masts and rigging of the vessel. That said tug Joseph Cooper, then laying alongside the said ship, discharged a heavy and continuous stream of water on the burning cotton, and that the crew of said tug, actively assisted by libellant and using the said steam-pump, were enabled, after about three quarters of an hour severe labor, to extinguish said fire and arrest the destruction of the said ship and her cargo.

6. That without the presence of said tow boat and the crew and libellant, and the timely discovery made by him, and the prompt alarm given by him, the said ship and cargo would have been entirely destroyed, inasmuch as no other assistance could have been had and was within
28 reach to extinguish the fire then raging on said vessel and her cargo.

7. That libellant, for the services so rendered as aforesaid in conjunction with said tug and her crew in saving said vessel and her cargo, is entitled to remuneration, and now urges his claim for compensation for said services by way of salvage.

8. That all and singular the premises are true.

Wherefore libellant prays that process of monition may issue to the marshal of the district aforesaid, commanding him to cite and admonish all persons having or pretending to have any right, title, or interest in the said ship Connemara, her tackle, apparel, cargo, and freight, to appear before this hon court on the day of , or such other day to be inserted in said monition as the court shall direct, and there to answer the libellant in the premises according to the course of court of admiralty, and the rules and practice of this hon. court in civil
29 causes of admiralty and maritime jurisdiction, and that this hon. court will pronounce for the libellant aforesaid, and decree the same to be paid with costs.

(Signed) W. O. DENEGRE,
Proctor for Libellant.

Let this intervention be filed.
May 8, 1879.
(Signed) EDWARD C. BILLINGS,
Judge.

Release bond.—Filed May 8th, 1879.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents, that we, John Cameron, master and lawful bailee for Wm. P. Sinclair & Co., of Liverpool, Eng., claimant and owners of the ship Connemara, cargo, &c., as principal, and Alfred Moulton and Samuel H Kennedy as sureties, are held and firmly bound unto Joseph Cooper, John Williams, David Rowland, Barney Collins, Samuel Black, William Cooper, Charles Vogt, William Doherty,
30 Tony Roig, George Boidel, Louis Wuertz, Henry Holser, and John Evers, libellants, in the sum of thirty-five thousand dollars, lawful money of the United States of America, for the payment whereof to the said libellants, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals, hereunto affixed by us, at New Orleans, this 8th day of May, 1879.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suit of Joseph Cooper et als. vs. Ship Connemara, cargo, &c., her tackle, apparel, and furniture, and numbered 11375 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship, cargo, &c., &c, which has been seized accordingly, but has been released from said seizure and delivered to John
Cameron, the master and lawful bailee thereof, by reason of the
31 signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court:

Now the condition of the above obligation is such, that if the said claimants and sureties abide by all the orders interlocutory or final of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

(Signed) JOHN CAMERON.
(") ALF. MOULTON.
(") SAM'L H. KENNEDY.

Signed, sealed and delivered in the presence of—
R. DEVONSHIRE,
Dy Clk.

Alf. Moulton and Sam'l H. Kennedy, sureties on the within bond, being duly sworn, say that they reside in this city, and are worth the sum of $35,000 over and above all their just debts and liabilities.

(Signed) ALF. MOULTON.
32 (Signed) SAM'L H. KENNEDY.

Sworn to and subscribed before me this 8th day of May, A. D. 1879.

(Signed) J. DEVONSHIRE,
U. S. Commissioner.

Writ of release.—Issued May 8th, 1879.

United States district court, district of Louisiana.

CLERK'S OFFICE,
New Orl's, May 8, '79.

JOSEPH COOPER
vs.
SHIP CONNEMARA, &C. } No. 11375.

The President of the United States of America to the marshal of the district of Louisiana or his lawful deputy, greeting:

Whereas John Cameron, master and bailee of said ship and cargo, &c., hath this day filed a claim thereto on behalf of the owners, and which said claim is now of record in this office.

You are hereby authorized to release the said ship, and cargo, &c., from seizure, and her and it to restore to the possession and
33 custody of said claimant, he having given bond conditioned as required by law, and otherwise complied with the rules of the court, and make return herein of your doings in the premises.

Witness the Hon. Edward C. Billings, judge of said court, at New Orleans, this 8th day of May, A. D. 1879, and the 103 year of the Independence of the United States.

(Signed) R. DEVONSHIRE,
Dy Clk.

Marshal's return.

Received May 8, 1879, by the U. S. marshal and released same day.

(Signed) ALF. BOURGES,
Dy Marshal.

Hearing and submission.—Extract from Minutes, May 20, 1879.

JOSEPH COOPER ET AL.
vs.
SHIP CONNEMARA & CARGO. } No. 11375.

This cause came on for trial.

J. R. Beckwith for libellants.

J. & W. S. Finney for claimants.

R. De Gray & W. O. Denegre for intervenors.

34 And after hearing the pleadings, evidence, and argument, the court took time to consider.

Judgment and reference.—Extract from minutes, May 21, 1879.

JOSEPH COOPER ET AL.
vs.
SHIP CONNEMARA & CARGO. } No. 11375.

This cause came on to be heard and was argued by counsel. On consideration thereof the court adjudges and decrees as follows: That eight per cent. on the value of the ship and cargo, say on 236,637, be allowed

the for salvage service in this cause. One-half of these 8% to be the share of the owners of the tug Joseph Cooper, jr., the other half the share of the crew of said tug, the three passengers, Wuertz, Evers and Holzer to be treated as members of the said crew, and paid out of the share allotted to it, Wuertz and Evers ranking as pilots, and Holzer as steersman, and it was referred to J. Devonshire, commissioner, to report the amount accruing to the parties under this decree.

35 *Report of commissioner.—Filed May 22d*, 1879.

U. S. district court.

JOSEPH COOPER & AL. *vs.* SHIP CONNEMARA & CARGO. } No. 11375.

The decree rendered in this cause, on the 21st day of May, 1879, awarded eight per cent. of the value of ship, cargo, &c., as salvage. The valuation had been previously agreed upon between the parties to this cause, and fixed at $236,637. One-half of the salvage award was decreed to the owners of the tug, Joseph Cooper, jr., which had rendered the salvage services; the other half was awarded to the crew of said tug in the proportion that the wages of each bore to the monthly pay-roll of said tug. Wuertz, Evers, and Holzer, intervening libellants, who were passengers on the tug at the time of the rendering of the salvage services aforesaid, were decreed salvage out of the amount awarded to the crew, Wuertz and Evers ranking as pilots and Holzer as steersman, and it was referred to me to prepare a tableaux in accordance
36 with the principles laid down in said decree, which I have prepared, and herewith submit, viz.:

Value of ship, cargo, &c, agreed upon, $236,637; eight per cent. of this amount awarded as salvage, viz, $18,930.96, ½ of which, viz, $9,465.48 was awarded the owner, Joseph Cooper, of the tug, and the same amount to the crew, in the proportion above set forth, as follows:

Name.	Rank.	Pay per mo.	Proportion of salvage.
Jno. J. Williams	Master	$100	$1,296 67
David Rowland	Chief eng'r	100	1,296 67
Sam'l Black	Pilot	75	972 51
Barney Collins	Ass't eng'r	65	84 83
Cha's Voght	Steersman	35	453 75
Wm. Cooper	"	35	453 75
Tony Roig	Fireman	45	583 51
Wm. Doherty	Do.	45	583 51
Geo. Bordell	Cook	45	583 51
E. Wuertz	To rank as pilot	.....	972 51
W. Evers	" " " "	.....	972 51
H. Holzer	" " " steersman	.....	453 75
			$9,465 48

Respectfully submitted.
(Signed) J. DEVONSHIRE,
U. S. Comm'r.

Decree of distribution of salvage.—Extract from judgment book.

JOSEPH COOPER ET AL.
vs. } No. 11375.
SHIP CONNEMARA & CARGO.

The commissioner having reported on the amount accruing to the salvors in the award adjudged to them in the decree of the 21st inst., it is ordered and decreed that his report be confirmed and that the parties recover from the ship Connemara and cargo, with costs of suit, as follows:

1. The owners of the tug Joseph Cooper, jr., the sum of....	$9,565 48
2. The officers and crew of said tug, viz:	
John J. Williams, master	$1,296 67
David Rowland, chief eng	1,296 67
Sam'l Black, pilot	972 51
Barney Collins, ass't eng	842 83
Chas. Voght, steersman	453 75
Wm. Cooper, "	453 75
Tony Roig, fireman	583 51
Wm. Doherty "	583 51
Geo. Boidell, cook	583 51
E. Wuertz, to rank as pilot	972 51
W. Evers, " " " "	972 51
H. Holsher, " " " steersman	453 75
Total award	$18,930 96

It is further ordered that a fee of $50 be allowed the commissioner for his services, and that the same be taxed as costs.

38 And whereas the libelled property had been released from seizure and restored to the owner on giving bond, conditioned as the law directs, it is further adjudged and decreed that Wm. P. Sinclair & Co., of Liverpool, England, claimants and owners of ship and cargo by John Cameron, master and their lawful bailee, as principals, and Alfred Moulton and Samuel H. Kennedy, as sureties on the release bond, be condemned in solido to pay the foregoing judgment with costs.

Judgment rendered May 22, 1879.

Judgment signed May 27, 1879.

(Signed) EDWARD C. BILLINGS,
Judge.

Order of appeal.—Extract from minutes, May 31, 1879.

JOSEPH COOPER & AL.
vs. } 11375.
SHIP CONNEMARA.

On motion of John & W. S. Finney, proctors for Wm. P. Sinclair & Co., of Liverpool, and Wm. P. Sinclair and Samuel Gibson Sinclair, individual members of said firm, and Alfred Moulton and Samuel
39 H. Kennedy, and on showing the court that there is error to their prejudice in the final judgment herein rendered against them on the 22 of May, 1879, and signed on the 27 of May, 1879, and in favor of Joseph Cooper, John J. Williams, David Rowland, Barney Collins, Charles Voght, William Cooper, Tony Roig, William Doherty, George

Bordell, E. Wuertz, W. Evers, and H. Holsher, and that said Wm. P. Sinclair & Co., and Wm. P. Sinclair and Samuel Gibson Sinclair and Alfred Moulton and Samuel H. Kennedy are desirous to take an appeal to the circuit court of the U. S. for this district from said final judgment, to operate as a supersedeas.

It is ordered by the court that the said Wm. P. Sinclair & Co. and Wm. P. Sinclair and Samuel Gibson Sinclair, and Alfred Moulton, and Samuel H. Kennedy have and be allowed an appeal from said decree to operate as a supersedeas returnable to the circuit court of the United States for this district on the first Monday of November, 1879, on giving bond in the sum of $250 for costs considering that there is already on file a bond for $35,000 upon which the property was released from seizure.

Appeal bond.—Filed June 2d, 1879.

UNITED STATES OF AMERICA,
District of Louisiana:

District court of the United States. In admiralty.

Appeal bond.

JOSEPH COOPER & AL.
vs.
THE SHIP CONNEMARA. } No. 11375.

Know all men by these presents, that we, Wm. P. Sinclair & Co., and William P. Sinclair and Samuel Gibson Sinclair, individual members thereof, and Samuel H. Kennedy and Alfred Moulton, as principals, and Peter Anderson as surety, are held and firmly bound unto Joseph Cooper, John J. Williams, David Rowland, Samuel Black, Barney Collins, Charles Voght, William Cooper, Tony Roig, William Doherty, George Boidell, Wuertz, W. Evers, and H. Holsher in the sum of two hundred and fifty dollars to be paid to the said obligees, for the payment of which well and truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seal, and dated at New Orleans, the second day of June, 1879.

Whereas the above-named Wm. P. Sinclair & Co., and Wm. P. Sinclair and Samuel Gibson Sinclair, individual members, and Samuel H. Kennedy and Alfred Moulton have appealed to the next term of the circuit court of the United States for the 5th circuit and district of Louisiana, from a final judgment of the district court of the United States for said district, rendered against them on the 22d day of May, 1879, and signed on the 27 day of May, 1879, in the above entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute their appeal to effect and answer all damages and costs, and satisfy whatever judgment may be rendered against them if they fail to make their appeal

good, then this obligation to be void, otherwise the same shall be and remain in full force and effect.

(Signed) WM. P. SINCLAIR & CO.,
p'r JOHN FINNEY, *Proctor.*

(do.) WILLIAM P. SINCLAIR,
p'r JOHN FINNEY, *Proctor.*

(do.) SAMUEL G. SINCLAIR,
p'r JOHN FINNEY, *Proctor.*

(do.) SAM'L H. KENNEDY.
(do.) ALF. MOULTON.
(do.) P. ANDERSON.

Bond approved.

(Signed) EDWARD C. BILLINGS,
Judge.

Order on sureties.—Extract from minutes, June 2d, 1879.

JOSEPH COOPER & AL. *vs.* SHIP CONNEMARA. } 11375.

On motion of J. R. Beckwith, proctor for libellants, ordered that Alfred Moulton and Samuel H. Kennedy, sureties on the release
43 bond, do appear in court on to morrow. 3d instant, at 11 a. m., for examination concerning their sufficiency.

Order bond adjudged good.—Extract from minutes June 3d, 1879.

JOSEPH COOPER & AL. *vs.* SHIP CONNEMARA. } 11375.

In this case after hearing the deposition of Alfred Moulton, one of the sureties on the release bond, the court adjudges said bond good and sufficient.

Cross-appeal by libellants.—Extract from minutes June 3d, 1879.

JOSEPH COOPER & AL. *vs.* SHIP CONNEMARA. } 11375.

On motion of J. R. Beckwith, proctor for libellants, and on suggesting to the court that the claimants have taken steps looking to an appeal from the decree herein to the circuit court, it is ordered that the said libellants be allowed a cross-appeal from the said decree herein
44 to the circuit court of the United States for this district returnable at the next stated term thereof, upon their giving bond in the sum of $200, conditioned as the law directs.

Appeal bond.—Filed June 4, 1879.

Know all men by these presents that we, Joseph Cooper as principal, and J. R. Beckwith, of the city of New Orleans, as surety, are held and firmly bound unto John Cameron, claimant, and all other parties in interest as claimants of the ship Connemara, her boats, tackle, and freight,

and cargo, his and their several administrators, executors, and assigns, in the full sum of two hundred dollars, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, fully by these presents, sealed with our seals, and dated at New Orleans, on this 4th day of June, A. D. 1879.

The condition of the above obligation is such that whereas the said above bounden Joseph Cooper, libellant, for himself and for an'
45 in the interest of all the libellants represented in the libel exhibited and on file in the case of Joseph Cooper et al. vs. the ship Connemara, her tackle, and freight, and cargo, No. 11375 of the docket of the district court of the United States for the district of Louisiana, has made and filed a motion for an appeal from a final decree in admiralty, in the above described cause of record therein in said court, to the circuit court of the United States for the said district of Louisiana, returnable at the next stated term thereof.

Now, therefore, if the above bounden principal, Joseph Cooper, shall prosecute said appeal, and shall satisfy any and all such judgment for costs as may be rendered against him, or if the same shall be satisfied by the sale of his real or personal property in the event that he shall not make good the said appeal, then this obligation shall be null and void, but otherwise to remain in full force and effect.

(Signed) JOSEPH COOPER,
Per J. R. BECKWITH,
46 *His Proctor.*
(Signed) J. R. BECKWITH.

Witness:
(Signed) J. B. MURTAGH.

PROCEEDINGS IN THE CIRCUIT COURT OF THE UNITED STATES.

Hearing and submission.—Extract from minutes, November term, 1879.

NEW ORLEANS,
Wednesday, January 28th, 1880.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

JOSEPH COOPER ET AL.
vs. } 8856.
SHIP CONNEMARA, CARGO, &C.

This cause came on to be further heard, and having been argued by John Finney for the appellants and J. R. Beckwith for libellants, cross-appellants, the court took time to consider.

Findings and decree.—Entered and filed March 6th, 1880.

JOSEPH COOPER ET AL.
vs. } 8856.
47 THE SHIP CONNEMARA & CARGO.

This cause came on to be heard upon the transcript of the record of the pleadings, evidence, reports, proceedings, and decrees of the district court, and upon the evidence filed in this court since the appeal from the district court was perfected, and was argued by the proctors of the parties, respectively.

On consideration whereof, the court here being fully advised in the premises, finds the following facts:

On April 15, 1879, the libellant, Joseph Cooper, was the owner, and the libellant, John J. Williams, was the master of the said steam tow-boat Joseph Cooper, jr., and John Cameron, mentioned in the libel, was the master of the defendant, the said ship Connemara.

2d On the said April 15, 1879, the said ship Connemara was lying in the port of New Orleans, laden with a cargo of about 4,000 bales of compressed cotton and other merchandize, on a voyage to Liverpool, England.

48 3. Between 4 and 5 o'clock p. m. of said day, the said ship having engaged the services of the said tow-boat Joseph Cooper, jr., to tow her from New Orleans to the mouth of the Mississippi River, left the port of New Orleans on her said voyage in tow of the said Joseph Cooper, jr., and proceeded down the said river.

4. After reaching a point in the river about twenty-six miles below the city of New Orleans, the said ship, at about 8 o'clock p. m., came to anchor nearly opposite the Belair plantation.

5. When said ship came to anchor, she and her cargo together were worth the sum of $236,637.

6. About 11 o'clock p. m. of said day a fire was discovered in said ship, and an alarm of fire given; said fire was not in the hold of the ship, but in the poop, above the main deck, and near the door, which could be opened by raising the latch. When discovered it was confined to a sail, which had been laid away in the poop, to three bales of cotton and two coils of tarred rope. There were 127 bales of cotton stored in the poop.

49 7. When the alarm of fire was given the steam-tug Joseph Cooper was lying lashed to the side of said ship, and remained so lashed until the fire was extinguished.

8. The Joseph Cooper, jr., had on her deck a pump operated by steam, and hose sufficient to reach the fire on board said ship, and when the alarm of fire was given the said hose was laid from the said pump to the deck of the said ship and the pump set in motion. After playing fifteen or twenty minutes upon the fire with said pump and hose the fire was extinguished.

9. At the time of the fire the wind was blowing stiffly and the ship was lying with her head to the current and her stern to the wind. No watch had been set on board the said ship.

10. No efficient effort was made by the officers and crew of the ship to extinguish the fire.

11. The first and second mates and the boatswain of the ship were at the time of the fire under the influence of liquor, but the captain and the rest of the crew were sober.

50 12. The ship had as a means for extinguishing fire two tanks on her deck within 12 or 15 feet of the fire, each of which held 400 gallons, and one of which was half full and the other full of water, with 6 buckets near the fire and 7 above, and a pump by which water could have been pumped upon the upper deck.

13. The fire was not caused by fault of the steam-tug Joseph Cooper, jr., or any defect in her management or equipment.

14. The steam-tug Harry Wright was at the time of the fire lying at anchor one-fourth of a mile distant from the said ship at the time of the fire on board her, fully equipped with steam pumps for the extinguishment of fire, and there was a telegraph station on the Belair plantation

from which a telegraph could have been sent to the city of New Orleans for aid to extinguish the fire upon the ship, and it would have been possible for efficient aid to reach said ship from the said city in about two and one half hours after notice.

15. That said fire on said ship was extinguished by the exer-
51 tions of the officers and crew of the said steam-tug Joseph Cooper, jr., and the passengers on board said ship, namely, Louis Wuertz, Henry Holser, and John Evers, using and aided by the steam pump and hose on board said steam-tug.

16. The part performed by said passengers, Wuertz and Holser, in extinguishing said fire is correctly set forth in the intervening libel filed April 23d, 1879, and the part performed by said John Evers in extinguishing said fire is correctly set forth in his intervening libel filed May 8th, 1879.

17. In extinguishing said fire on board said ship, there was no serious risk of loss or damage to the said steam tow-boat Joseph Cooper, nor any damage to life or limb of the salvors or any of them.

18. The result of said fire was the burning of the sail and the two coils of rope, and the partial burning of three bales of cotton, and the charring of a part of the upper deck or roof of the poop. There was no further damage resulting from said fire.

19. At the date of said fire and the extinguishment thereof,
52 the said libellant, Joseph Cooper, was the owner of the said steam towboat Joseph Cooper, jr.; that said libellant, John J. Williams, was her master, whose monthly wages were $100, and her other officers and crew were the following named persons, whose monthly wages were respectively as follows: David Rowland, chief engineer, $100; Samuel Black, pilot, $75; Barney Collins, assistant engineer, $65; Charles Voght, steersman, $35; William Cooper, steersman, $35; Tony Roig, fireman, $45; William Doherty, fireman, $45; George Boidel, cook, $45; and that all of said officers and crew of the said steam towboat Joseph Cooper, jr., assisted in the extinguishment of said fire on board said ship.

And as conclusions of law from the findings of fact aforesaid, the court is of opinion and finds,

1. That the service rendered by the said steam towboat, her officers, and crew aforesaid, and the said Wuertz, Holser, and Evers in the extinguishment of the fire on board the said ship Connemara, was a salvage service.

2. That a gross salvage on said ship and cargo of $14,198, which is 6 per cent. on the value thereof, should be allowed.

53 That said salvage should be divided between the owner of the said steam-tug Joseph Cooper, jr., and the said salvors as follows, one-half to the owner of the Joseph Cooper, jr., and the other half to the salvors.

4. That the moiety of said salvage allowed the salvors should be divided among them in proportion to their monthly wages, the said passengers Wuertz and Evans to rank as pilots, and the said Holser as steersman.

It is therefore ordered, adjudged and decreed, that the libellants Joseph Cooper, owner of the tug Joseph Cooper, jr. and John J. Williams, the master, and David Rowland, and others, the crew of the said tug named in the 19th finding, and Louis Wuertz, John Evers, and Henry Holser, passengers named in the 15th finding, do have and recover, with the costs of said suit from the ship Connemara and cargo, defendants herein, the following sums of money, to wit:

1. To Joseph Cooper the owner of the tug Joseph Cooper, jr		$7,099
2. To the crew of the said tug, viz:		
John J. Williams, master		972 46
David Rowland, chief engineer		972 46
54 Samuel Black, pilot		729 35
Barney Collins, asst. engr		632 10
Charles Voght, steersman		340 36
William Cooper, do		340 36
Tony Roig, fireman		437 61
William Doherty, do		437 61
George Boidell, cook		437 61
Louis Wuertz, passenger, to rank as pilot		729 35
John Evers, do " " " "		729 35
Henry Holser, do " " " steersman		340 38
		$7,099 00

And whereas the said ship and cargo were released from seizure and restored to the owners thereof upon giving bond according to law, it is further ordered, adjudged, and decreed, that William P. Sinclair & Co. of Liverpool, England, owners and claimants of the said ship and cargo, by John Cameron, master of said ship, and their lawful bailee, as principals, and Alfred Moulton, and Samuel H. Kennedy, as sureties on the said release bond, be condemned, jointly and severally, to pay said several sums, amounting to fourteen thousand one hundred and ninety-eight dollars and the costs of suit.

March 6, 1880.

[Signed] W. B. WOODS,
Circuit Judge.

55 *Motion and order for appeal.—Extract from the minutes November term*, 1879.

NEW ORLEANS,
Tuesday, March 16th, 1880.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

JOSEPH COOPER ET AL.
vs.
SHIP CONNEMARA, CARGO. } No. 8856.

On motion of John and W. S. Finney, and J. McConnell, proctors for William P. Sinclair & Co., of Liverpool, England, and of William P. Sinclair and Samuel Gibson Sinclair, individual members of said firm, owners and claimants of said ship Connemera, cargo, &c., by John Cameron, master of said ship, and as such lawful bailee, claimants herein, and of Alfred Moulton and Samuel H. Kennedy, sureties, all defendants herein, and on suggesting to the court that there was a final judgment herein rendered against them on the 6th day of March, 1880, and signed the same day condemning them jointly and severally to pay the sum of fourteen thousand one hundred and ninety-eight dollars and costs
56 of suit, and on further suggesting that said movers are advised and believe that there is error to their prejudice in said judgment and the findings of fact and conclusions of law, and that they are ag-

grieved thereby, and that they desire to appeal suspensively therefrom to the Supreme court of the United States, and on further suggesting to the court that the property libelled herein, to wit, the said ship Connemera, cargo, and freight was released from seizure upon the claimant giving bond in the sum of thirty-five thousand dollars, as shown by the record, with said Alfred Moulton, and Samuel H. Kennedy as sureties thereon, and said bond was accepted as sufficient as a release bond as aforesaid, and also after the judgment rendered in the said district court, said bond was, after examination, adjudged to be good and sufficient as a bond for the suspensive appeal taken herein from the said district court to this honorable court, as appears from the record herein at pages 151 and 152.

Which said motion was resisted by the proctors for the parties herein who have severally recovered decrees for less than five thousand dollars.

57 Whereupon, after hearing the proctors for all of the parties herein, it is ordered that an appeal from the decrees rendered herein for less than $5,000, in favor of John J. Williams, master, and David Rowland, Samuel Black, Barney Collins, Charles Voght, William Cooper, Tony Roig, Wm. Dougherty, and George Boidell, the crew of the said tug Joseph Cooper, jr., and Louis Wuertz, John Evers, and Henry Holsher, intervenors, be, and the same is hereby, refused.

And it is further ordered that as to the decree in favor of Joseph Cooper, owner of the said tug Joseph Cooper, jr., an appeal to operate as a supersedeas be allowed returnable to the Supreme Court of the United States at the next term thereof, to wit, on the 2d Monday of October, 1880, upon the said appellants furnishing bond with good and solvent security in the sum of five hundred dollars, conditioned as the law directs, to be approved by the court.

58 *Motion and order.—Appeal allowed from all parts of the decree.—Entered and filed March 27, 1880.—Extract from minutes of March 27th, 1880.*

JOSEPH COOPER ET AL.
vs. } 8856.
SHIP CONNEMARA, CARGO, ETC.

On motion of J. McConnel and Jno. and W. S. Finney, proctors for claimants herein, it was ordered that the following order allowing an appeal with supersedeas from all parts of the final decree herein be filed and entered of record, and it is in the words and figures following, viz:

Circuit court, U. S., 5th circuit, district of Louisiana.

JOSEPH COOPER ET AL.
vs. }
SHIP CONNEMARA, CARGO, &C.

On application of P. Phillips, as counsel for claimants in the above cause, an appeal is allowed to them from all parts of the decree rendered on 6th March, and denied by the circuit judge. The appeal hereby allowed to operate as a supersedeas as of the 16th March, when
59 the said petition was filed, security being given according to law.

March 22d, 1880.

(Signed) JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S., allotted to 5th Circuit.

Appeal bond.—Filed March 23d, 1880.

U. S. circuit court, fifth circuit, district of Louisiana.

JOSEPH COOPER ET AL.
vs.
SHIP CONNEMARA, CARGO, &C. } No. 8856.

Know all men by these presents that we, William P. Sinclair & Co., a commercial firm composed of William P. Sinclair and Samuel Gibson Sinclair, individual members of said firm, owners and claimants of said ship Connemara and cargo, &c., by John Cameron, master of said ship, and as such lawful bailee of said ship, cargo, &c., and of John Cameron, master and bailee, claimants herein, and Alfred Moulton and Samuel H. Kennedy as principals, and Samuel Simpson as surety, are held and firmly bound jointly and severally unto Joseph Cooper, owner of the tug Joseph Cooper, jr., in the sum of five hundred dollars,
60 to be paid to said Joseph Cooper, owner, &c., his heirs, executors, administrators, and assigns, for the payment of which well and truly to be made in lawful money of the United States, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at New Orleans this 23d day of March, 1880.

Whereas the above-named William P. Sinclair & Co. and William P. Sinclair and Samuel Gibson Sinclair, members of said firm, owners and claimants of said ship, cargo, &c., and John Cameron, master and lawful bailee for said ship, cargo, and freight, and as such claimant for the owners thereof, Alfred Moulton and Samuel H. Kennedy have this day made and filed in this court, to wit, the circuit court of the United States for the fifth circuit and district of Louisiana, a motion in writing praying for a suspensive appeal from a final judgment herein rendered against them on the 6th day of March, 1880, and signed on said
61 day, to the Supreme Court of the United States, and made returnable in said Supreme Court at the next term thereof, to wit, on the second Monday of October, 1880:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal herein taken to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against them if they fail to make their appeal good, then this obligation to be void, otherwise the same shall be and remain in full force and effect.

(Signed) WILLIAM P. SINCLAIR & CO., &
JOHN CAMERON,
Master et al., Appellants.
By JNO. & W. S. FINNEY, &
J. McCONNELL, *Proctors.*
(Signed) SAMUEL H KENNEDY.
(do.) ALF. MOULTON.
(do.) SAM'L SIMPSON.

Approved as of the date of the 16 March, A. D. 1880.
(Signed) EDWARD C. BILLINGS,
Judge.

Samuel Simpson, surety on the within appeal bond, being first
62 duly sworn, deposes and says that he resides in the city of New

Orleans, and is worth the sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) SAM'L SIMPSON.

Subscribed and sworn before me, March 16, 1880.

(Signed) F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

Approved as to sufficiency of the surety.

(Signed) EDWARD C. BILLINGS,
Judge.

Appeal bond.—Filed April 6th, 1880.

U. S. circuit court, fifth circuit of Louisiana.

JOSEPH COOPER
vs.
SHIP CONNEMARA, CARGO, &C. } No. 8856.

Know all men by the' presents that William P. Sinclair & Co., a commercial firm composed of William P. Sinclair and Samuel Gibson Sinclair, individual members of said firm, owners and claimants of the ship
63 Connemara, cargo and freight, by John Cameron, master of said ship, and as such lawful bailee of said ship, cargo, and freight, and John Cameron, master and bailee, claimants herein, and Alfred Moulton and Samuel K. Kennedy as principals, and Samuel Simpson as surety, are held and firmly bound, jointly and severally, unto John J. Williams, David Rowland, Samuel Black, Barney Collins, Charles Voght, William Cooper, Tony Roig, William Dougherty, George Bordell, Louis Weurtz, John Evers, and Henry Holsher, in the sum of five hundred dollars, to be paid to said obligees, their heirs, executors, administrators, and assigns, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 16th day of March, 1880, at the city of New Orleans.

Whereas the above-named William P. Sinclair & Co., and Will-
64 iam P. Sinclair and Samuel Gibson Sinclair, members of said firm, owners and claimants of ship, cargo, and freight, and John Cameron, master, and lawful bailee for said ship, cargo, and freight, and as such claimant for the owners thereof, and Alfred Moulton and Samuel H. Kennedy have this day made and filed in this court, to wit, the circuit court of the United States for the fifth circuit and district of Louisiana, a motion in writing, praying for a suspensive appeal from a final judgment herein rendered against them on the 6th day of March, 1880, and signed on the same day, to the Supreme Court of the United States, and made returnable in said Supreme Court at the next term thereof, to wit, the second Monday of October, 1880:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal herein taken to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against them if they fail to make their appeal

good, then this obligation to be void; otherwise the same shall be
65 and remain in full force and effect.

(Signed) WILLIAM P. SINCLAIR & CO. &
JOHN CAMERON,
Master, and others, Appellants,
By JNO. & W. S. FINNEY, &
J. McCONNELL, *Proctors.*
(do.) SAMUEL H. KENNEDY.
(do.) ALF. MOULTON.
(do.) SAM'L SIMPSON.

Samuel Simpson, surety on the within appeal bond, being first duly sworn, deposes and says that he resides in the city of New Orleans, and is worth the sum of five hundred dollars over and above all his debts and liabilities, and property exempt from execution.

(Signed) SAM'L SIMPSON.

Sworn to and subscribed before me on this 26 day of March, A. D. 1880.

[SEAL.] (Signed) J. G. EUSTIS,
U. S. Comm'r, Dist. of La.

I am satisfied that this bond is sufficient, and the sureties good and sufficient.

(Signed) EDWARD C. BILLINGS, *Judge.*

66 The foregoing bond approved as a supersedeas bond.
March 30th, 1880.
(Signed) JOSEPH P. BRADLEY.

67 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 66 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Joseph Cooper et al. versus Ship Connemara, cargo, &c., No. 8856 of the docket of said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 6th day of July, A. D. 1880. (Nineteen words erased approved.)

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 6th day of July, A. D. 1880.

W. B. WOODS, *Judge.*

68 The United States of America to Joseph Cooper, John J. Williams, David Rowland, Barney Collins, Samuel Black, William Cooper, Charles Voght, William Doherty, Tony Roig, George Boidel, Louis Weurtz, Henry Holsher, John Evers, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein William P. Sinclair and Samuel Gibson Sinclair, of the firm of William P. Sinclair & Co., John Cameron, Alfred Moulton, and Samuel H. Kennedy, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 30th day of March, in the year of our Lord one thousand eight hundred and eighty.

JOSEPH P. BRADLEY.

69 (Indorsed:) United States circuit court. No. 8856. Citation.

Marshal's return.

Received Jun' 1, 1880, by the U. S. marshal, and on June 8th, 1880, I served a true copy of the within citation of appeal, on John J. Williams, David Rowland, Barney Collins, Samuel Black, William Cooper, Charles Voght, William Doherty, Tony Roig, & George Boidel, appellees herein, by delivering the same to J. R. Beckwith, esq., the proctor and attorney of record for the aforesaid appellees, in person, in the city of New Orleans, district of Louisiana.

On June 2d, 1880, I served a true copy of the within citation of appeal on Louis Weurtz & Henry Holsbier, appellees herein, by delivering the same to R. De Gray, esq., the proctor & attorney of *of* record for the aforesaid appellees, in person, in the city of New Orleans, district of Louisiana.

On June 4th, 1880, I servid a copy of the within citation of appeal on John Evers, appellee herein, by delivering the same to George Denegree, esq., the proctor for the aforesaid appellee, in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me, E. S. Curry, a depnty U. S. marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellees herein named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me June 12, 1880.

F. A. WOOLFLEY.
Commissioner United States Circuit Court District of Louisiana.

70 The United States of America to Joseph Cooper, John J. Williams, David Rowland, Barney Collins, Samuel Black, William Cooper, Charles Voght, William Doherty, Tony Roig, George Boidel, Louis Weurtz, Henry Holsher, John Evers, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein William P. Sinclair and Samuel Gibson Sinclair, of the firm of William P. Sinclair & Co., John Cameron, Alfred Mouton, and Samuel H. Kennedy are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 30th day of March, in the year of our Lord one thousand eight hundred and eighty.

JOSEPH P. BRADLEY.

71 (Indorsed:) 8856. Citation.

Received Apr. 7, 1880, by the U. S. marshal, and on this 13th day of April, in the year of our Lord one thousand eight hundred and eighty, personally appeared before me, the subscriber, E. S. Curry, a deputy United States marshal for the district of Louisiana, and makes oath that he delivered a true copy of the within citation to the appellees named in the within writ as set forth in his official return hereon attached and made a part of this return.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Sworn to and subscribed the 13th day of April, A. D. 1880.

T. V. COUPLAND,
D'y Clerk.

72 *Marshal's return.*

Received Apr. 7, 1880, by the U. S. marshal, and on April 8th, 1880, I served a true copy of the within citation of appeal on the appellees herein named in the following manner, to wit: On Joseph Cooper, John J. Williams, David Rowland, Samuel Black, Barny Collins, Charles Voght, William Cooper, Tony Roig, William Dougherty, & George Boidell, by delivering a copy hereof to J. R. Beckwith, esq., the attorney for the aforesaid appellees, in person, in the city of New Orleans, district of Louisiana.

On April 8th, 1880, I serv'd a copy hereof on Louis Wurtz & Henry Holsher, appellees herein, by delivering the same to Richard De Gray, esq., the attorney for the aforesaid appellees, in person, in the city of New Orleans, district of Louisiana.

On April 8th, 1880, I serv'd a copy hereof on John Evers, appellee herein, by delivering the same to I. H. Stauffer, jr., esq., a member of the law firm of Stauffer & Denegree, attorneys of record for the aforesaid appellee, in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
Deputy U. S. Marshal for District of Louisiana.

(Indorsement on cover:) No. 842. William P. Sinclair & Company, a firm composed of William P. Sinclair and Samuel Gibson Sinclair, owners & claimants of the ship Connemara, & cargo, &c., by John Cameron, master, et al., appellants, vs. Joseph Cooper, owner of the tug Joseph Cooper, jr., & Jno. J. Williams, master, & al. Louisiana C. C. U. S. Filed 26th August, 1880.

ADDITION TO RECORD No. 842.

United States Supreme Court.

W. P. SINCLAIR & CO., CLAIMANTS OF THE ship Connemara, et al., appellants,
vs.
JOS. COOPER, OWNER OF THE TUG JOS. COOPER, jr., et al., appellees.
} No. 842.

It is admitted there is an error in the fifteenth finding of fact in this, that Louis Wurtz and Henry Holsher are therein stated to have been passengers on the ship Connemara, whereas they were passengers on the tug-boat Jos. Cooper, jr.

And it is hereby agreed that the above numbered finding of fact may be corrected accordingly.

New Orleans, Dec. 21, 1880.

J. McCONNELL,
For Claimants & Appellants.
RICHARD DeGRAY,
For Louis Wurtz & Henry Holsher.
J. R. BECKWITH,
Proctor for Joseph Cooper and Master & Crew of the Tug Joseph Cooper, jr.

10-8-352

IN THE

Supreme Court of the United States.

SINCLAIR & CO.,
Claimants of the ship Connemara,
vs.
JOSEPH COOPER, ET AL.

No. 255.

Brief of P. Phillips and W. Hallett Phillips for Appellants.

IN THE

Supreme Court of the United States.

SINCLAIR & CO.,
Claimants of the ship Connemara,
vs.
JOSEPH COOPER, ET AL.
No. 255.

Brief of P. Phillips and W. Hallett Phillips for Appellants.

On a libel for salvage against the ship Connemara and cargo, the court decreed the sum of $14,198.

The appellants assign for error—

First. That the facts found do not constitute a salvage service.

Second. That, as salvage, the amount allowed is exorbitant, it being salvage of the lowest grade.

Third. The amount allowed to John Evers was unwarranted in law, he being a *passenger* on board the Connemara.

The finding of facts is as follows:

The Connemara, with a load of cotton for Liverpool, about 4 o'clock, left New Orleans, with the tow boat Joseph Cooper, Jr., engaged to tow her to the mouth of the river.

Having reached a point in the river 26 miles from the city, at about 8 o'clock, they came to anchor.

> 6th. "About 11 o'clock P. M. of said day, a fire was discovered in said ship, and an alarm of fire given; said fire was not in the hold of the ship, but in the poop, above the main deck, and near the door, which could

be opened by raising the latch. When discovered, it was confined to a sail, which had been laid away in the poop, to three bales of cotton, and two coils of tarred rope."

7th. "When the alarm of fire was given the steam-tug Joseph Cooper was lying lashed to the side of the ship, and remained so lashed until the fire was extinguished."

8th. "The Joseph Cooper had on her deck a pump operated by steam, and hose sufficient to reach the fire, and, when the alarm was given, the said hose was laid from the pump to the deck of the ship, and the pump set in motion. After playing fifteen or twenty minutes upon the fire with said pump and hose, the fire was extinguished."

9th. "At the time of the fire, the wind was blowing stiffly, and the ship was lying with her head to the current and her stern to the wind. No watch had been set on board the said ship."

10th. "No efficient effort was made by the officers and crew of the ship to extinguish the fire."

11th. "The first and second mates and the boatswain of the ship were, at the time of the fire under the influence of of liquor, but the captain and the rest of the crew were sober."

12th. "The ship had, as means for extinguishing the fire, two tanks on her deck within 12 or 15 feet of the fire, each of which held 400 gallons—one was half full and the other full of water, with six buckets near the fire and seven above, and a pump by which water could have been pumped on the upper deck."

13th. "The fire was not caused by fault of the steam-tug Joseph Cooper, or any defect in her management or equipment."

14th. The steam-tug Harry Wright was, at the time of the fire, lying at anchor one-fourth of a mile distant from the said ship, fully equipped with steam pumps for the extinguishment of fire, and there was a telegraph station on the Belair plantation, from which a telegraph could have been sent to the city of New Orleans for aid to extinguish the fire, and it could have been possible for efficient aid to reach the ship from the city in about two and one-half hours after notice."

15. "That said fire was extinguished by the exertions of the officers and crew of the steam-tug Joseph Cooper, and the passengers on board of said ship, viz.: Louis Wuertz, Henry Holser, and John Evers, using and aided by the steam-pump and hose on board said steam-tug."

17. "The part performed by said passengers, Wuertz and Holser, in extinguishing the fire is correctly set forth in the intervening libel of 22 April, 1879; and the part performed by John Evers in extinguishing the fire is correctly set forth in his intervening libel, 8 May, 1879.'

18. "The result of the fire was the burning of the sail and the two coils of rope, and the partial burning of three bales of cotton, and the charring of the upper deck or roof of the poop. There was no further damage resulting from the fire."

On these findings the decree must stand or fall.

The facts so found are not only *conclusive*, but are *exclusive* of all other facts.

It is in vain, therefore, for appellee's counsel to complain that such a mode for presenting the case does not properly exhibit all the circumstances belonging to it.

There is nothing in the record to show that they applied for further findings, which the court refused; but if it so appeared, it would avail them nothing.

The Abbotsford, 98 U. S., 440.

Thus testing the case, we submit the Joseph Cooper and crew are not entitled to salvage compensation, but only to a liberal remuneration *pro opere et labore*.

"The ingredients of salvage service are, first, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to to serve their fellow-creatures and to secure the property of their fellow-subjects; secondly, the degree of danger and distress from which the property is rescued, whether it was in imminent peril and almost certainly

lost, if not at the time rescued and preserved; thirdly, the degree of labor and skill which the salvors incur and display, and the time occupied; lastly, the value. Where all these circumstances concur a liberal reward ought to be given; but where none, or scarcely any, take place, the compensation can hardly be denominated a salvage compensation; it is a little more than a mere remuneration, *pro opere at labore*."

Sir John Nicholl.—The Clifton, 3 Hagg. Adm., 117, cited in Abbott on Shipping, marg'l p. 557.

And so this court defines the elements of salvage service to be: "danger to property, value, risk of life, skill, labor and the duration of the service."

Post vs. *Jones*, 19 How., 161.

Let us admit, *arguendo*, that the case presents a claim for salvage—we insist that it is salvage service of the lowest order.

The service was performed by the tug boat and her crew then in the employ of the ship.

The tug boat did not go to the ship, but was, at the time, lashed to her.

The time occupied in the service was fifteen minutes.

The ship was quietly anchored in the river, 26 miles from New Orleans, nigh to a telegraph station connected with the city, and one-fourth of a mile distant was lying the steam-tug Harry Wright, fully equipped with steam pumps for the extinguishment of fire.

The alarm was given by Evers, a passenger on the ship, "to the officers and crew of the ship, and the officers and crew of tug boat."

When the fire was discovered, there was no serious danger to the ship. It was in the poop above deck, the door of which was closed only by a latch.

The ship was fully provided with the means of extinguishing it. Within a few feet there were two tanks, con-

taining 600 gallons of water, and she had thirteen buckets near by.

The steam-tug—whose value is not given—was exposed to no danger. No peril was incurred by her crew—no skill displayed.

For the use of her pump and hose for fifteen minutes the court awarded the sum of $14,198. The value of the ship and cargo being estimated at $236,637.

Of this sum, one-half—$7,099—was decreed to the owners of the tug.

It was long doubted, whether a tug, while engaged in the service of the ship, could ever claim salvage.

It is well settled that when a tug is so engaged, this will greatly diminish the quantum of reward.

James' Salvage, 40.

Dr. Lushington in the Wm. Brandt, 2 Notes of Cases, sup., p. XVII.

The main ingredient, *danger*, being absent in ordinary services rendered by tugs, large amounts should not be awarded.

The Birdie, 7 Blatch., 243.

So, where a contract of towage is entered into with a tug, she is bound, notwithstanding a temporary accident interrupting the towage, to complete the contract; and if the ship, without the fault of the tug, should ground on a dangerous sand-bank, the tug could not sue for salvage for towing her off—otherwise, when *an extraordinary peril* arises to the vessel towed, and the tug renders assistance beyond the scope of the original engagement.

Williams & Bruce Adm., p. 100.

"Remuneration is awarded to the owners of the salving vessel on account of the *danger* to which the

service exposes their property, and the risk which they run of loss, in suffering their vessels to engage in such perilous enterprises."

The Blackwell, 10 Wall., 14.

The case before us shows that the tug, in rendering the service, was exposed to *no danger whatever*. Her owners received the stipulated price for the towage. This connected her with the ship; yet, for 15 minutes' use of her pump and hose, they are to receive $7,094!

It is to be noted that the value of the tug—which was only of *100 tons burden*—is not given. If allowed to speculate, we should say that this was her full value.

The only possible ground to be urged in support of the decree is the *value of the ship and cargo*; but this should not constitute the main consideration of the case.

Say the Privy Council:

"The rule seems to be that, though the value of the property salved is to be considered in the estimate of the remuneration, it must not be allowed to raise the quantum to an amount altogether out of proportion to the services actually rendered."

The Amerique, L. R., 6 P. C. Appeals, 472.

In a case where there was an agreement for salvage, Dr. Lushington said:

"I cannot assent to the proposition that by the value of the cargo the salvors are to determine the amount of their agreement. It is perfectly true that the court does, to a certain and *limited extent*, take into consideration the value of the property saved in assessing salvage compensation with the view of making the general rate of compensation sufficient to induce persons to undertake salvage services, and as it were, to a certain extent, making up in cases of large value for the impossibility of giving a complete and adequate reward in cases of small value. Salvors are not entitled to make an agreement upon any other grounds

than these: *the extent of danger to which the property to be saved is exposed; the degree of labor they will have to undergo; the risk to which they themselves may be exposed; and the length of time to be occupied;* but they are not to speculate on the *value of the cargo.*"

The Henry, 2 Eng. Law & Eq., 565.

The fire once discovered, the officers and crew had the means at hand for easily extinguishing it, without any intervention on the part of the tug.

"If (says Parsons) the peril encountered be something distinctly beyond ordinary danger, something which exposes the property to destruction, unless extraordinary assistance be rendered, it is enough to found a claim for salvage. But if the master can, by the *proper use of the means he possesses*, save the property, the law *presumes that he will*, and that the salvors interference was unnecessary.

"The salvors may, however, show that, though the master could save the ship, he would not have done so."

2 Parsons on Ship, 283.

We have met with no case in which so extravagant an allowance has been made with reference to its facts.

Where the true elements of salvage service—peril to property and life, skill and enterprise—justify the policy of allowing a liberal compensation, a very different consideration exists than where the services rendered belong to the lowest grade of salvage. Such services may ordinarily be compensated by daily wages.

The decree in favor of Evers, a passenger on the Connemara, is not sustainable.

"In general, neither the master, nor passenger, seaman, or pilot is entitled to compensation in the way of salvage, for the ordinary assistance he may have afforded a vessel in distress, as it is no more than a duty. For a salvor is a person who, without *any par-*

ticular relation to the ship in distress, proffers useful service and renders it without any pre-existing contract making the service a duty.

"But a passenger, or an officer, acting as such, for *extraordinary exertions* has been deemed entitled to a liberal compensation as salvage.

"So, also, in a case of *extraordinary peril*, it is admitted that *great exertions and personal hazard* may exalt a *pilotage service* into something of a salvage service."

3 Kent's Com., marg. p. 246.

In a case where an officer in the Royal Navy rendered assistance to the ship in distress of which he was a passenger, the court said:

"No case has been cited where such a claim by a passenger has been established. When there is a common danger it is the duty of every one on board to give all the assistance he can."

The Branston, 2 Hagg. Rep., 3.
The Clarita, 23 Wall., 18.
The Vrede, 1 Lush., 322.

In the latter case, Dr. Lushington is thus reported:

"Services rendered by passengers must have occurred over and over again, yet, except the cases of the Branston and the Salacia, there is apparently no precedent on which a claim for salvage by a passenger has been prosecuted in this court."

The exception to the general rule is again expressed in these terms:

"If they assume extraordinary responsibility and devise original and unprecedented means by which the ship is saved after her officers have proved themselves powerless."

The Great Eastern U. S. D. C. for N. G., per Shipman.

What is said in the citation from Kent, as to pilots,

we submit is applicable to the claim for salvage by a tug-boat.

There is nothing in the findings which brings Evers within the exception to the rule excluding passengers from clearing salvage.

We, at the same time, admit that his discovery of the fire, and arousing the officers and crew of the ship and of the tug, was valuable. For after all hands were brought on to the scene of action, it was apparent the danger was over. That there was, in fact, no serious danger, is seen in the result: that it took but 15 minutes to extinguish it. If danger existed it could at most extend to the contents of the poop. The cargo was below and well secured.

In the 10th finding it is said: "No efficient effort was made by the officers and crew of the ship to extinguish the fire."

It is not found that they omitted to do what duty demanded.

Why, then, did they make no "efficient effort?"

Plainly, because they saw that the use being made of the hose of the tug was all that was necessary, and that no further appliance was called for. There within a few feet of the fire hung the ship's buckets, and there in tanks were 600 gallons of water. It would have been but a vain show to have resorted to means which the circumstances did not call for.

It cannot be doubted that without the use of the tug's hose, the large force on board of the ship would by the means they possessed speedily have extinguished the fire.

Under these circumstances the aid of the tug to its companion ship was an act of kindness and merits compensation. An award of $1,000 would have been ample remuneration for fifteen minutes' service in extinguishing the

fire which partially burned "the sail, two coils of rope, and three bales of cotton."

The jurisdiction of the appellate court to *increase* or *diminish* the amount awarded in salvage cases, is well established, both in England and in this country. The principles of justice, the rules of the admiralty, and the interests of commerce alike demand this revision.

The decree in this case, as applied to the facts found, is without a parallel, and loudly calls for the intervention of the court.

P. PHILLIPS,
W. HALLETT PHILLIPS,
for appellant.

See. Elliott v Lepsic. 13. Rep. 264
Jong Andries. Sura Adm 349
Baker v Hemmingway. 2. Law 504
The Josephine 2. Black 322

108-352

OFFICE SUPREME COURT U.S.
FILED
APR 6 1883
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 255.

WILLIAM P. SINCLAIR ET AL.,

versus

BEATRICE COOPER, WIDOW, AND TUTRIIX OF MINOR HEIRS OF JOSEPH COOPER, DECEASED, ET AL.

Admiralty Appeal. Brief of Appellee, Cooper.

JAS. R. BECKWITH,
CHAS. W. HORNOR,
Counsel for Owner and Crew of Joseph Cooper, Jr.

E. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 255.

WILLIAM P. SINCLAIR ET AL.,

versus

BEATRICE COOPER, WIDOW, AND TUTRIIX OF MINOR HEIRS OF JOSEPH COOPER, DECEASED, ET AL.

Admiralty Appeal. Brief of Appellee, Cooper.

STATEMENT OF THE CASE.

On the afternoon of the 15th of April, 1879, the ship Conemara, loaded with a cargo of cotton, and bound from New Orleans to Liverpool, England, was taken in tow by the steam tug Joseph Cooper, in the port of New Orleans, to be towed to sea. The towboat proceeded down the Mississippi river with this ship for about twenty-six miles, and then came to anchor. At about eleven o'clock on the night of said 15th of April, while the ship was at anchor and while the tug was lashed to her side, a fire was discovered on board of the ship, among her cargo stored in her poop, and was confined at the moment to a sail stored therein, to three bales of cotton and two coils of tarred rope. The ship at the time was lying with her head to the current and her stern or poop to the wind, which was blowing stiffly and consequently over the full length of the ship. No watches had been set on the ship, and three of her officers, the first and second mates and the boatswain, were drunk. There was no discipline on board and no watch set.

The tugboat Joseph Cooper was alonside, with banked fires, but with steam enough to at once set in action a large steam pump with which she was equipped. The wind was at half a gale. The appliances on the Conemara for meeting the danger were trifling, and of no use in the emergency.

Under the system based upon the act of congress relating to appeals in admiralty, the vast amount of detail, both showing the meritirious character of the service rendered and the great peril of the property saved, are not before the court, although, in the nature of things such details must have formed the real basis of the judgment of the Circuit Court in declaring the amount of compensation allowed salvors. The facts and conclusions of law found by the Circuit Court are the following (record, pages 16 *et seq.*):

"This cause came on to be heard upon the transcript of the "record of the pleadings, evidence, reports, proceedings and "decrees of the District Court, and upon the evidence filed in "this court since the appeal from the District Court was per-"fected, and was argued by the proctors of the parties re-"spectively. On consideration whereof, the court here being "fully advised in the premises, finds the following facts:

"1st. On April 15, 1879, the libellant, Joseph Cooper, was "the owner, and the libellant, John J. Williams, was the "master of the said towboat, Joseph Cooper, Junior; and "John Cameron, mentioned in the libel, was the master of the "defendant, the said ship Conemara.

"2d. On the said April 15, 1879, the said ship Conemara "was lying in the port of New Orleans, laden with a cargo of "about four thousand bales of compressed cotton and other "merchandise, on a voyage to Liverpool, England.

"3d. Between four and five o'clock p. m. of said day, the "said ship having engaged the services of the said towboat "Joseph Cooper, Jr., to tow her from New Orleans to the "mouth of the Mississippi river, left the port of New Orleans "on her said voyage, in tow of the said Joseph Cooper, Jr., "and proceeded down the said river.

"4th. After reaching a point in the river about twenty-six "miles below the city of New Orleans, the said ship, at about "eight o'clock p. m., came to anchor nearly opposite the Belair "plantation.

"5th. When said ship came to anchor she and her cargo "together were worth the sum of $236,637.

"6th. Apout eleven o'clock p. m. of said day a fire was "discovered in said ship, and an alarm of fire given. Said "fire was not in the hold of the vessel, but in the poop, above "the main deck and near the door, which could be opened by "raising the latch. When discovered it was confined to a "sail which had been laid away in the poop, to three bales of "cotton and two coils of tarred rope. There were one hund-"red and twenty-seven bales of cotton stored in the poop.

"7th. When the alarm of fire was given the steam tug "Joseph Cooper was lying lashed to the side of said ship, and "remained so lashed until the fire was extinguished.

"8th. The Joseph Cooper had on her deck a pump operated "by steam, and hose sufficient to reach the fire on board said "ship; and when the alarm of fire was given the said hose "was laid from said pump to the deck of said ship, and the "pump set in motion. After playing fifteen or twenty min-"utes upon the fire, with said pump and hose, the fire was "extinguished.

"9th. At the time of the fire the wind was blowing stiffly, "and the ship was lying with her head to the current and her "stem to the wind. No watch had been set on board the said "ship.

"10th. No efficient effort was made by the officers and "crew of the ship to extinguish the fire.

"11th. The first and second mates and the boatswain of the "ship were at the time of the fire under the influence of liquor, "but the captain and the rest of the crew were sober.

"12th. The ship had, as a means for extinguishing fire, two "tanks on her deck, within twelve or fifteen feet of the fire,

"each of which held four hundred gallons, and one of which "was half full and the other full of water, with six buckets "near the fire and seven above, and a pump by which water "could have been pumped upon the upper deck.

"13th. The fire was not caused by fault of the steam tug "Joseph Cooper, Jr., or any defect in her management or "equipment.

"14th. The steam tug Henry Wright was at the time of the "fire lying at anchor one-fourth of a mile distant from the said "ship at the time of the fire on board her, fully equipped with "steam pumps for the extinguishment of fire, and there was a "telegraph station on the Belair plantation, from which a tel-"egram could have been sent to the city of New Orleans for "aid to extinguish the fire upon the ship, and it would have "been possible for efficient aid to reach said ship from the said "city in about two and a-half hours after notice.

"15th. That said fire on said ship was extinguished by the "exertions of the officers and crew of the said steam tug "Joseph Cooper, Jr., and the passengers on board said ship "(namely, Louis Wurtz, Henry Holser and John Evers), using "and aided by the steam pump and hose on board the said "steam tug.

[It is admitted there is an error in the fifteenth finding of fact in this, that Louis Wurtz and Henry Holser are therein stated to have been passengers on the Conemara, whereas they were passengers on the tugboat Joseph Cooper, Jr.]

"16th. The part performed by said passengers, Wurtz and "Holser, in extinguishing said fire, is correctly set forth in the "intervening libel, filed April 23, 1879; and the part performed "by said John Evers, in extinguishing said fire, is correctly "set forth in his intervening libel, filed May 8, 1879.

"17th. In extinguishing said fire on board said ship there "was no serious risk of loss or damage to the said towboat "Joseph Cooper, Jr., nor any damage to life or limb of the "salvors or any of them.

"18th. The result of said fire was the burning of the sail and "the two coils of rope, and the partial burning of three bales "of cotton, and the charring of a part of the upper deck or roof "poop. There was no further damage resulting from said fire.

"19th. At the date of said fire and the extinguishment "thereof, the said libellant, Joseph Cooper, was the owner of "the said steam towboat Joseph Cooper, Jr.; that said libel-"lant, John J. Williams, was her master, whose monthly "wages were $100, and her other officers and crew were the "following named persons, whose monthly wages were repec-"tively as follows: David Rowland, chief engineer, $100; "Samuel Black, pilot, $75; Barney Collins, assistant engineer, "$65; Charles Voght, steersman, $35; William Cooper, steers-"man, $35; Tony Roig, fireman, $45; William Doherty, fire-"man, $45; George Boidell, cook, $45; and that all said "officers and crew of said steam towboat Joseph Cooper, Jr., "assisted in the extinguishment of said fire on board said "ship.

"And, as conclusions of law from the findings of fact afore-"said, the court is of opinion and finds—

"First. That the services rendered by the said steam tow-"boat, her officers and crew aforesaid, and the said Wurtz, "Holser and Evers, in the extinguishment of the fire on board "the said ship Conemara, was a salvage service.

"Second. That a gross salvage on said ship and cargo of "$14,198, which is six per cent. on the value thereof, should "be allowed.

"Third. That said salvage should be divided between the "owner of the said steam tug Joseph Cooper, Jr., and the sal-"vors, as follows: one-half to the owner of the Joseph Cooper, "Jr., and the other half to the salvors.

"Fourth. That the moiety of said salvage allowed the sal-"vors should be divided among them in proportion to their "monthly wages, the said passengers, Wurtz and Evers, to "rank as pilots, and the said Holser as steersman."

There was a decree accordingly. From this decree the claimants have appealed.

The undersigned counsel represent Mrs. Beatrice Cooper, the widow in community and tutrix of the minor heirs of Joseph Cooper, the owner of the towboat Joseph Cooper, Jr., he having departed this life since the cause has been pending in this court. The master and crew of the Joseph Cooper, Jr., Louis Wurtz and Henry Holser, passengers on the Cooper, and John Evers, passenger on the Conemara, intervenors, are represented by other counsel.

At the present date counsel for appellees are not advised of any brief or assignment of errors by appellants.

It is difficult to anticipate any ground for the reversal or modification of the decree of the Circuit Court. If any effect is to be given to the act of February 16, 1875, the decree is final. The first section of the act provides that—

"The review of the judgments and decrees entered upon "such findings by the Supreme Court, upon appeal, shall be "limited to a determination of the questions of law arising "upon the record, and to such rulings of the Circuit Court, "excepted to at the time, as may be presented by a bill of "exceptions, prepared as in actions at law."

There are no bills of exceptions in the record, and no cross appeals. We respectfully submit that, although, in form, the findings in the record are divided into findings of fact and conclusions of law, there is not in the record a conclusion or finding, of which the appellants can complain, which is not either a finding of fact, pure and simple, or a finding so involved in fact that the finding cannot be disturbed without setting aside a matter of fact distinctly found by the Circuit Court.

The act of February 16, 1875, has never been received by the profession with favor, for the manifest reason that it brings to this court but a bare skeleton of the real facts in any admiralty cause. Particularly is this true in causes where the question is where fault lies in collision, or the fair and just

award in salvage causes. In such causes the thousand and one facts and details which control the Circuit Court in finding where fault lies in collision, or the true award in salvage causes, can never reach this court.

In this cause, beyond all doubt, the only so-termed conclusions of law of which the appellants can complain are Nos. 1 and 2, viz.:

No. 1. "*That the service rendered by the said towboat, her "officers and crew aforesaid, and the said Wurtz, Holser and "Evers, in the extinguishment of the fire on board said ship Con-"emara, was a salvage service.*"

This conclusion is either a simple question of fact, or, if there is mingled with it any thread or filament of law, the law cannot be modified or changed without a total disregard of the fact involved. Even the jurisdiction of both the District and Circuit Courts rested upon the question of salvage *vel non as a fact.* If this conclusion, be it of law or fact, can be questioned here, it is supported by the facts found under the head of findings of facts, and is not erroneous.

The second alleged conclusion of law is—

"*That a gross salvage on said ship and cargo of $14,198, which "is six per cent. on the value thereof, should be allowed.*"

There is no law fixing salvage compensation. It is a *quantum meruit* in the full sense of the term. In the ordinary case of wages for work and labor performed, or goods sold and delivered, the question is the value of the work or reasonable value of the goods. In case of salvage the court *must find* the value of the service, whatever may be the measure of recompense. If it is for work and labor done, then its value is a fact. If, on the other hand, salvage money is bounty and reward, the question of the *quantum of salvage* does not rest upon *caprice. The measure of reward and bounty cannot be other than a question of fact—a quantum meruit quoad the bounty,* if it is bounty in any sense of the word.

That the finding of the Circuit Court as to the measure of

salvage compensation ought to be considered final under the present system of appeal, is made evident from the course of reasoning upon which the court must enter to justify any finding that the allowance is incorrect as it now stands in the decree of the Circuit Court. In order to change the finding of the Circuit Court this court must find, *as a fact*, that the amount found by the Circuit Court is either too high or too low in amount; and, when ascertained, change the decree only as to *that fact*.

We respectfully submit that if the act of 1875 is construed in such manner as to make the allowance in salvage causes reviewable, the act is most unjust in its operation upon libellants. The measure of salvage allowance should rest upon a full consideration of *all the facts and circumstances* surrounding the property at the moment of peril.

The findings of fact in the record are extremely full and explicit, yet contain necessarily little or nothing of the details by which the exact amount of peril to vessel, cargo and the towboat Cooper, can be ascertained. The inflammable character of the house on deck in which the burning cotton was stored; its contiguity to the rigging and top hamper; the capacity and character of the pump on the Cooper, and the value of the prompt exertion of the salvors; the value of the appliances on the Conemara for extinguishing fire; whether the Harry Wright had steam in her boilers, and could have reached the Conemara and set her pump in motion in time to have saved the vessel, were all matters of issue and proof in the Circuit Court, and made the basis of the estimate of salvage allowed; yet not a single one of these facts can be considered here.

To change the salvage award in this court is in effect a trial of a fact in this court without the proof upon which the Circuit Court acted, and seems unfair both to the Circuit Court and the libellants, if the change involves reduction of the amount.

If, however, it is assumed that the award of salvage in this case is not a *question of fact* to be determined by the Circuit Court, or, if it can be held to be a question of law, so disconnected with facts found as to be made a subject of review in this court, the judgment is correct and should be affirmed.

Justice Story, in Rowe vs. Brig ——, 1 Mason 375, stated the rule thus: "In salvage cases the measure of reward has "never been adjusted by a mere estimate of the labor and ser- "vices performed by the salvors. * * * An enlarged poli- "cy, looking to the safety and interest of the commercial world, "decrees, a liberal recompense with a view to stimulate ambi- "tion by holding out what may be deemed an honorable re- "ward."

Mr. Conklin, in his work on Admiralty, says, page 238: "*If "the property saved is of great value, or if it was in a condition "apparently hopeless, or if the service was undertaken with alacrity "and executed with a high degree of energy and skill*, or if it in- "volved extraordinary peril, or required severe and exhausting "labor, the retribution ought to be proportionately liberal."

The writer then lays it down as a general rule that the salvage allowed in cases of derelict is one-half the value of the property saved, and in other cases it ranges from one-half to one-eighth.

Courts have also held that where the service has been rendered by means of steam vessels and mechanical appliances, whereby the salving can be done in a shorter time and with less destruction to the property salved, that services thus efficiently and expeditiously rendered should on that account be paid for more liberally.

Marvin on Wreck and Salvage, sec. 117, on the authority of cases there cited, declares: "That a large remuneration is to be "given when the salvage service is performed by or for steam "vessels, than in ordinary cases, inasmuch on one hand they are "fitted out at greater cost, and as salvor vessels possess "great skill and power, and on this account sound policy

" prompts to the encouragement of their salvage services; and, " on the other hand, as they usually carry many passengers, " the cause of humanity requires that prompt and efficient sal- " vage should be liberally rewarded."

And in case of H. D. Bacon vs. ——, 1 Newb. 284, the court said: "When persons like the plaintiffs, by great ingenuity " and skill and at great expense, succeed in the construction " of apparatus and machinery by which a boat can be raised in " twelve hours which could not be raised at all without their " machinery and apparatus, why should the owner complain of " the shortness of the time employed? The sooner the property " is raised out of the water the better for the owner."

In the second Maritime Law Cases, page 215, Dr. Lushington held: "When salvage services are rendered by steamships, " the amount of salvage which the court will award is not ne- " cessarily affected by the fact of the services performed occu- " pying only a short time."

In the United Kingdom, The Hercules and others, 2 Maritime Cases, pages 387 and 388, the court declared: "As to the period " of time which the salvage services occupied, the court has " often had occasion to observe that the shorter the period oc- " cupied in rescuing the ship from distress, the more meritori- " ous was the service."

Equally certain is it that in arriving at a suitable salvage award that the court is not to be governed by the fact (if fact it is) that the property might have been saved in some other way—as, for instance, by the tug Harry Wright, at anchor a quarter of a mile off, or possibly by tugs sent from the city of New Orleans.

"In fixing the amount of salvage the court will not consider " the possibility that the vessel might have been saved in some " other manner." The Charles, Newb. 329.

In the case of the Henry Eubank, 1 Sum. 414, Judge Story said. "We are not to indulge mere possible conjectures on " such subjects. The fact that she was saved is clear. The pre-

"sumption that she might otherwise have been saved during "this long period is a matter of conjecture *in nubibus*. It is "not the habit of any court of justice to yield themselves up in "matters of right to mere conjectures and possibilities; and "least of all do courts of admiralty, in cases of salvage, yield "themselves to imaginations of this sort. Salvors are not to "be driven out of court upon the suggestion that if they had "not touched a derelict ship and cargo the latter might, in "some possible way, have been saved from all calamity, and "therefore that the salvors have little or no merit."

Can it, then, on an application of this law to the facts stated, be successfully said that the award made by the Circuit Court is too large?

First. We have property, amounting to nearly $250,000, the value of the ship and cargo, floating on the Mississippi river at midnight; the two chief officers and guardians of the property, as well as the boatswain, are "under the influence of liquor;" and although the captain and the rest of the crew were sober, they were unable or unwilling to meet any exigency which a sudden peril of the elements might occasion. The ship and cargo were thus, to a certain extent, *quasi-derelict*, necessitating, under the circumstances hereinafter set forth, the active, *immediate* intervention of outside aid for the saving of the property.

In this state matters had rested for about four hours. The single passenger on board the ship (John Evers; his intervening libel is on record, page 8), then sleeping in the second cabin occupied by the second mate, was awakened by the smoke; the odor emitted was that of burning cotton; "that "he sprang from his berth, awoke the steward, then asleep in "the cabin in which the libellant was, and directed him to "proceed to the cabin and notify the captain of the ship; that "libellant rushed on deck and gave the alarm to the officers "and crew of the tug Joseph Cooper, then laying alongside of "the ship Conemara; that the cotton on said ship was at this

"time on fire; that considerable headway had already been "attained, and the ship and cargo in immediate danger of de- "struction, and but for the timely discovery of the existence of "the fire by libellant, together with the said tug Joseph "Cooper, and her officers and crew, as hereinafter set forth, "your libellant verily believes, and so alleges, that said ship "and her cargo would have been completely destroyed." See sixteenth finding of facts.

Here we have "the impending peril" then and there present and actualized. The destruction of the ship and cargo was a mere question of time. At the moment of the discovery of the fire, it is submitted, no insurance company in the world would have taken a risk on that ship and cargo. Besides this, we have the ninth finding: "At the time of the fire the wind "was blowing stiffly and the ship was lying with her head to "the current and *her stern to the wind.*" (The fire was not in the hold of the ship, but in the poop, above the main deck). "*No watch had been set on board the said ship.*" Here, too, we have both fire and air co-operating for destruction.

Second. The fire, thus started and working blindly on most inflammable materials, was entirely capable of consuming the entire property ($250,000) in the minimum of a time which no human sagacity can accurately determine. The officers and crew, had any watch been set, might have discovered the fire before the smell of burning cotton reached the sleeping passenger, and at its first originating, might have arrested it. But the ship was helpless; "no efficient effort was made by the officers and crew of the said ship to extinguish the fire." Tenth finding: That service was done by the libellants (and is briefly but very plainly set forth in the eighth finding), and mainly by the instrumentality of the steam pump and hose belonging to the tug. "After playing fifteen or twenty min- "utes upon the fire with said pump and hose, the fire was ex- "tinguished." It is submitted, the services of the libellants were prompt, efficient, successful and meritorious.

Third. We think, from all the facts found, it must certainly be concluded that the present is a case of salvage in conformity to the first conclusion of law of the circuit judge; and in this concurring in opinion with the district judge. This brings us to the only point seriously contested by the appellants—the reward due for the salvage service.

The amount of salvage allowed was a percentage of six per cent. on the amount of property in peril and saved. The District Court had awarded eight per cent.

The question here presented is, has the discretion vested by the admiralty law in the lower judge been exercised in such a way as to call for the interposition of this appellate tribunal? Is his award of six per cent. so exaggerated as to need correction? Is it so exorbitant, so manifestly excessive, that it would be unjust in your honors to confirm the judgment appealed from.

The admiralty law both of the United States and England is, that in regard to the discretion of the lower judge in this matter of salvage, the appellate court only interposes upon some clear and palpable mistake or gross over-allowance of the court below. "It is equally against sound policy and public "convenience to encourage appeals of this sort in matters of "discretion, unless there has been some violation of the just "principles which ought to regulate the subject." Hobart vs. Drogan, 10 Peters 108–119; The Sibyl, 4 Wheaton 98.

The admiralty law of England is equally well settled. "It "has never been the rule or practice of this committee to en- "ter into the question of *quantum* where there has been no- "thing (to use a familiar expression) to shock the conscience— "nothing gross, nothing extravagant." The Carrier Dove, 2 Moore's P. C. Cases (N. S.), 254 *et passim.*

This English doctrine is peculiarly applicable to this English ship and her cargo, for almost all admiralty cases involve more or less the *jus gentium.*

If, then, the case be considered from the standpoint of the

appellants, it may be urged against the judgment of the Circuit Court that it is against conscience, gross and extravagant, and for which no precedent can be found in the books; that the service was very brief and trifling; that the tug was in the employ of the ship; that the fire had not become dangerous, and would have been readily extinguished by the crew had not the salvors interfered. In this regard reference is made to the gallons of water, buckets and pump of the ship; the vicinity of another tug; the proximity to the city of New Orleans, and the aid from thence obtainable in case of need.

But these matters of defence are all afterthought. They are the mere *possibilities* of the appellants' case. It remains true, however, all the time, that from the fire the property was preserved by this prompt and efficient service, and by the steam-pump, hose and power of the tug's machinery. Of what possible use were the gallons of water, the buckets and the pump of the ship when there was no one present to direct their employment? How long would it have taken the tug Harry Wright, only a quarter of a mile away, to raise steam and get to work on the fire? In the two hours and a-half to elapse before the arrival of help from the city what progress would the fire and wind together have made?

This standpoint is, we submit, partial and incorrect. The true standpoint is that laid down in Mason vs. The Ship Blaireau, 2d Cranch 240: "The allowance of a very ample compensation for those services (one very much exceeding the "mere risk encountered and labor employed in effecting "them) is intended as an inducement to render them, which it "is for the public interests, and for the general interests of "humanity, to hold forth to those who navigate the ocean."

"To estimate a salvage service, all the circumstances must "be taken into consideration in a combined view; and that if "*towage* led to a rescue of the vessel from danger, it should be "remunerated as *salvage*." The Isabella, 3 Hagg. 427; London Merchant, 3 Hagg. 395.

Promptness in rendering assistance is a principal ingredient in salvage service. The City vs. Edinburg, 2 Hagg, 334.

Respectfully submitted,

JAS. R. BECKWITH,

CHAS. W. HORNOR,

Counsel for Owner and Crew of Joseph Cooper, Jr.

108-35

SUPREME COURT U. S.
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SUPREME COURT

OF THE UNITED STATES.

No. .

WILLIAM P. SINCLAIR ET AL.

versus

JOSEPH COOPER ET AL.

ADMIRALTY APPEAL.

R. DEGRAY,
Proctor.

Eureka Job Print, 35 Natchez St.

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WILLIAM P. SINCLAIR ET AL.

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ADMIRALTY APPEAL.

Statement of the Case.

On the afternoon of the 15th of April, 1879, the ship Conemara, loaded with a cargo of cotton, and bound from New Orleans to Liverpool, England, was taken in tow by the steam tug Joseph Cooper, in the port of New Orleans, to be towed to sea. The towboat proceeded down the Mississippi river with this ship for about twenty-six miles and then came to anchor. At about eleven o'clock on the night of said 15th of April, while said ship was at anchor and while said tug was lashed to her side, a fire was discovered on board of said ship among her cargo stored in her poop, and was confined at the moment to a sail

stored therein, to three bales of cotton and two coils of tarred rope. The ship at the time was lying with her head to the current and her stern or poop to the wind, which was blowing stiffly and consequently over the full length of the ship. No watches had been set on the ship, and three of her officers, the first and second mates and the boatswain, were drunk.

In this condition of things the fire aforesaid was discovered by John Evers, who was a passenger on board the ship, (because the sixteenth finding, page 18, declares that what he did is correctly set forth by him in his intervening libel, filed May 18th, 1879, found on pages 8 and 9,) who was awakened by the smell of burning cotton. He awoke the steward, who was sleeping in the cabin, and directed him to notify the master of the ship, while he himself rushed out on deck and gave the alarm to the officers and crew of the ship and the officers and crew of the tug, assisted by intervening libellants Wuertz and Holsher, who were passengers at the time on board of said tug (see stipulation; amendment to record; amending fifteenth finding), which the latter answered immediately; carried a hose from a powerful steam pump on board of said tug on board of said ship to where the fire was; the pump was started, and after discharging a powerful stream on said fire for twenty minutes the same was extinguished, after which it was found that the extent of the fire was the burning of the sail, the coils of rope, the partial burning of three bales of cotton and the charring (burning to a coal) of a part of the roof of the poop. The ship and cargo were worth $236,637.

No efficient efforts were made by any one connected with the ship to extinguish the fire, nor had they the means wherewith to extinguish the same, their only means being an ordinary lifting pump and a few buckets, and about six hundred gallons of water stored in tanks, the water from which in all probability could not have been made available within sufficient time to save the ship and cargo from total destruction.

It is true that another tug, equipped with steam pumps for extinguishing fires, was lying at anchor about a quarter of a mile off, and that there was a telegraphic station on the plantation abreast of which the ship was lying, from which a dispatch could have been sent to New Orleans, and that it would have been possible for efficient aid to reach the ship from the city in about two and a half hours after notice, but whether that anchored tug had steam up (and if she did not her pumps and equipments were of no more avail to the Conemara and Cargo than the drift wood in the stream beside her), or whether a dispatch sent at that hour of the night would have found a tug with a crew aboard, steam up and equipped for extinguishing fires, and how long it would, in all probability, take such a dispatch to reach a boat thus equipped, does not appear.

But it does appear that the entire service was rendered by said tug and her crew, assisted by said Wuertz, Holsher and Evers, and that through their sole combined efforts said ship and cargo were saved from complete destruction, and that as far as the ship's officers and crew were concerned the ship and cargo might as well have been abandoned.

The Circuit Court, as conclusions of law, found the service rendered were salvage services, and that $14,198, or six per cent. on the value of the property salved, would be a proper allowance, one-half thereof to be given to the owners of the tug and the other half to be divided among the officers and crew of the tug according to their rates of pay, said Wuertz, Evers and Holsher to rank as part of said crew, the two former ones as pilots and the latter as steersman.

The claimants of the ship and cargo alone have appealed.

But one question presents itself for the consideration of the Court:

Was the allowance of the Circuit Court a proper allowance, considering all the circumstances of the case.

It hardly seems necessary to call the Court's attention to the fact that salvage is not compensation for the services rendered,

but that it is a bounty and reward for rescuing property in distress, and that sound policy and the interests of commerce demand that it should be liberal and such as to furnish incentives to like executions by others.

Justice Story, in Rowe vs. Brig ——, 1 Mason, 375, stated the rule thus:

"In salvage cases the measure of reward has never been adjusted by a mere estimate of the labor and services performed by the salvors. * * * An enlarged policy looking to the safety and interest of the commercial world decrees a liberal recompense with a view to stimulate ambition by holding out what may be deemed an honorable reward."

Mr. Conklin, in his work on Admiralty, says, page 238:

"*If the property saved is of great value, or if it was in a condition apparently hopeless, or if the service was undertaken with alacrity and executed with a high degree of energy and skill*, or if it involved extraordinary peril, or required severe and exhausting labor, the retribution ought to be proportionally liberal."

The writer then lays it down as a general rule that the salvage allowed in cases of derelict is one-half the value of the property saved, and in other cases it ranges from one-half to one-eighth.

Courts have also held that where the service has been rendered by means of steam vessels and mechanical appliances, whereby the salving can be done in a shorter time and with less destruction to the property salved, that services thus efficiently and expeditiously rendered should, on that account, be paid for more liberally.

Marvin on Wreck and Salvage, sec. 117, on the authority of cases there cited, declares: "that a larger remuneration is to be given when the salvage service is performed by or for steam vessels than in ordinary cases, inasmuch on one hand they are fitted out at greater cost, and as salvor vessels possess great skill and power, and on this account sound policy prompts to the encouragement of their salvage services; and on the other hand,

as they usually carry many passengers the cause of humanity requires that prompt and efficient salvage should be liberally rewarded."

And in case of H. D. Bacon vs. ——, 1 Newb. 284, the Court said: "When persons like the plaintiffs, by great ingenuity and skill and at great expense, succeeded in the construction of apparatus and machinery by which a boat can be raised in twelve hours which could not be raised at all without their machinery and apparatus, why should the owner complain of the shortness of the time employed? The sooner the property is raised out of the water the better for the owners."

In the second Maritime law cases, page 215, Dr. Lushington held: "When salvage services are rendered by steamships, the amount of salvage which the Court will award is not necessarily affected by the fact of the services performed occupying only a short time."

In the United Kingdom, The Hercules and others, 2 Maritime cases, pages 387 and 388, the Court declared:

"As to the period of time which the salvage services occupied, the Court has often had occasion to observe that the shorter the period occupied in rescuing the ship from distress the more meritorious was the service."

Equally certain is it that in arriving at a suitable salvage award that the Court is not to be governed by the fact (if fact it is) that the property might have been saved in some other way, as, for instance, by the tug Harry Wright, at anchor a quarter of a mile off, or possibly by tugs sent from the city of New Orleans.

"In fixing the amount of salvage the Court will not consider the possibility that the vessel might have been saved in some other manner." The Charles, Newb. 329.

In the case of the Henry Eubank, 1 Sum. 414, Judge Story said:

"We are not to indulge mere possible conjectures on such subjects. The fact that she was saved is clear; the presumption that she might otherwise have been saved during this long period

is a matter of conjecture *in nubibus*. It is not the habit of any court of justice to yield themselves up in matters of right to mere conjectures and possibilities; and least of all do courts of admiralty, in cases of salvage, yield themselves to imaginations of this sort. Salvors are not to be driven out of court upon the suggestion that if they had not touched a derelict ship and cargo the latter might, in some possible way, have been saved from all calamity, and, therefore, that the salvors have little or no merit."

Can it, then, on an application of this law to the facts stated, be successfully said that the award made by the Circuit Court is too large?

The value of the property saved is large. That it was in peril cannot be seriously or successfully disputed. No watch had been set on the ship. The first and second mates and the boatswain were drunk, and the steward and the captain were asleep, and when the fire was discovered no efforts were made by the officers and crew to extinguish it, and added to this was the high rate of wind then blowing the full length of the ship from the stern, where the fire was, to the bow of the ship.

It is true the fire was above the main deck, but this only increased the peril considering the state of the weather, for if the wind had ever reached the fire, considering not only the inflammable character of the cotton but also the inflammable material of the ship, her seams caulked with oakum and paid with tar, her rigging of tarred rope and her masts and spars of resinous pine, she would instantly have been enveloped in flames and to such an extent that all the tugs in New Orleans would not have saved her.

Cotton on fire in the lower hold, in the middle or even in the upper between decks burns slowly and with a smouldering flame, because there is not sufficient air to stimulate the combustion, but when exposed to the open air, and especially to a high wind, it burns with a combustion that is swift and terrible.

Any one who has ever witnessed the conflagration of a cotton laden steamboat, whether with compressed or uncompressed

cotton, will not for a moment doubt this assertion, for in the history of steamboat fires the tug or number of tugs have not yet been found that could subdue the flame or save the property.

We have said that the only question before the Court is the allowance of the entire amount of salvage.

There is but one appeal, and that is by the claimants of the vessel and cargo. As to the division of the sum awarded among the owners of the tug and her crew there is no complaint among the parties entitled thereto, and in that division the claimants of the cargo have no interest. This much has already been decided herein on the motion to dismiss. See 103 U. S, page 755, where the Court said: "It was a matter of no consequence to the owners of the property saved how the money recovered was apportioned among those who had earned it." Then after stating that "in all cases where we have held the several sums decreed in favor of or against different persons, could not be united to give us jurisdiction on appeals, it will be found that the matters in dispute were entirely separate and distinct, and were joined in one suit for convenience and to save expense." And citing the cases it is declared: "Here, however, the matter in controversy was the amount due the salvors collectively and not the particular sum to which each was entitled when the amount due was distributed among them. As in the case of Shields vs. Thomas, 17 H. 3. They all claimed under one and the same title. They had a common and undivided interest in the claim, and it was perfectly immaterial to the appellants how it was to be shared among them. If there was any difficulty as to the proportions, the dispute was among themselves.

But in case the Court should be of opinion that the rule of division here adopted is open for discussion and decision, we say the rule adopted in the court below is supported by the most undoubted authority.

Salvage is a bounty and reward for individual service, so much so that until the decision of The Camanahes in the 8 W. 448, it

was a matter of grave doubt with courts and among the profession whether a corporation, as the owner of a salvor vessel, could claim salvage at all.

The owners of the tug Cooper individually rendered no service, and were not present at the time the service was rendered. Their only representation was by their property, the tug. The real salvors were the crew.

The owners of the salving vessels whose crews perform salvage service, share the salvage compensation, although not present when the service was performed, solely on the ground of the risk and damage to which their property may be subjected.

"The owners under ordinary circumstances are allowed one-third and the crews two-thirds, but when the vessel is a steam vessel and exposed to great peril a larger proportion." 2 Parson's Admiralty.

One-half has usually been awarded owners of a steamer where the usual proportion to owners of sailing vessels would be one-third. 1 Ben. 550.

In the case of the bark Delphos, Newbury R. 412, and Marvin on Wreck and Salvage, sec. 213, which was a cotton laden vessel, and where the services were rendered by steam towboats with their pumps and hose, manned by their crews as well as by those crews in scuttling the vessel, and where the tugs "were exposed to considerable peril of taking fire themselves," one-third only was awarded the owners of the tug.

In the case of T. P. Leathers, one-half was allowed to the crew and one-half to the owners. Newb. 431.

In the case of the Chalmette, where the service was rendered by a steam tug, was of a low grade—mere towing; and where it was somewhat doubtful whether it was a salvage service at all. one-half of the amount allowed was awarded to the crew. 1 W. 397.

In Souderburg vs. The Ocean Towboat Co., 3 Woods, page —, which was a cotton laden ship on fire in the Mississippi river, and where the services were rendered by steam tugs with their

pumps and hose, all run and directed by the crew, one-half was awarded the crews.

Numerous other cases, decided not only in Louisiana, but elsewhere, to the same effect, might be cited, and they are all supported by the principle that underlies all salvage awards.

It is true, capitalists are to be rewarded for the money they invest in machinery and mechanical appliances, and hence the relaxation of the old rule of two-thirds to the crew and one-third to the owners, when salvage services were rendered by sailing vessels and their crews.

Machinery, without the intelligence and skill to govern and direct it, has but one quality, that of *inertia*. The active, living vital force is the judgment, intelligence and skill that directs and controls.

A liberal reward to the crew is likewise in the interest of the owner of the machinery and appliances, for to be available and effective it must be intelligently and skillfully directed. A salvage service is a voluntary effort on the part of the officers and crews, which no vessel in distress has the legal right to demand. Now, let the rule be established that these voluntary efforts are to be slighted, and the division to be made largely in favor of owners; that there is to be no guarantee that the alacrity, skill and enterprise of the crew will be liberally and bountifully rewarded, and it will require no extraordinary amount of foresight to see how soon that machinery will cease to be either efficient or profitable.

Respectfully submitted,

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Proctor.